

E2852

Entered

BY THE SAME AUTHOR

PRISONERS AND PAUPERS

**A Study of the Abnormal Increase of Criminals
and Pauperism in the United States. Fully
illustrated. 8°, pp. xiii. + 317 . . . \$1.50**

"The writer of this book has had much and long experience in the administration of penal laws, and especially the management of convicts in the great prisons of Pennsylvania."—*N. Y. Tribune.*

THE SCIENCE OF PENOLOGY

THE DEFENCE OF SOCIETY AGAINST
CRIME

COLLATED AND SYSTEMATIZED BY

HENRY M. BOIES

MEMBER OF THE BOARD OF PUBLIC CHARITIES AND OF THE COMMITTEE
ON LUNACY OF THE STATE OF PENNSYLVANIA

AUTHOR OF "PRISONERS AND PAUPERS"

G. P. PUTNAM'S SONS
NEW YORK AND LONDON
The Knickerbocker Press

1901

COPYRIGHT, JUNE, 1901

BY

HENRY M. BOIES

The Knickerbocker Press, New York

TO
GENERAL JAMES A. BEAVER
CHRISTIAN CITIZEN, SOLDIER, STATESMAN, GOVERNOR
AND JUDGE
WHO FIRST APPOINTED HIM
COMMISSIONER OF THE PUBLIC CHARITIES OF PENNSYLVANIA
THIS FRUIT OF THAT ACT
IS APPROPRIATELY AND RESPECTFULLY
DEDICATED
AS A TRIBUTE OF THE ESTEEM
OF THE AUTHOR

PREFACE.

THE more familiar one becomes with the details of the attempts of society to secure protection from criminals, from early times to the present, the more profoundly he is likely to be impressed with their inordinate cost and their inutility. Notwithstanding our tremendous expenditure of effort and money, crime continues undiminished, and popular apprehension unrelieved. The laws do not protect. When a great social grievance exists, it becomes every one's duty to endeavor to discover its cause and cure. This responsibility has been very generally recognized. Many valuable and learned books have been written, scientific studies published, and profitable discussions conducted, which have so expanded our knowledge that it appears possible to propose a complete solution of the problem. The comprehensiveness of my public official duties has naturally inclined my attention to the entire range of criminal causes and effects, from birth to the end of life, in every diversity of social environment. Study and observation of this general nature have convinced me that the defense of society against crime cannot be successfully conducted without a complete and definite plan, organized upon a consistent theory and system, and that there is an urgent

fixed stability of scientific facts, without encumbering the context with the history of the processes by which the conclusions have been reached, or the full array of arguments by which they are supported, if this history and argument are easily accessible by reference. I have made these references, wherever they seemed useful, to those works which supply the fullest information and are of acknowledged authority.

The Science of Penology is offered the public in the hope that, whatever imperfections may appear, it may help to awaken a wider interest in the necessity for a more rational treatment of the violators of law, and assist those who make and execute the laws in the discharge of their duties to the greatest public advantage, by presenting a complete plan to which all details can be adjusted.

My grateful acknowledgments are due to many earnest philanthropists and penologists who have cheerfully assisted and encouraged me in the preparation of this work. I hope each one will accept this general expression of my sense of great obligation to him without the mention of any names, which might be embarrassing to some who should be named, and others who might by chance be omitted.

H. M. B.

SCRANTON, PA.,
February 15, 1901.

CONTENTS.

SECTION I.—DIAGNOSTICS.

CHAPTER I.

THE SCIENCE OF PENOLOGY DEFINED.

	PAGE
The Social Science—Penological Science—Its Province and Objects — Its Importance — Number of the Criminal Class—Social Cost of Crime—Necessity of a Reformation in Treatment of Criminals — Subdivisions of the Science — Diagnostics — Therapeutics — Hygienics	3

CHAPTER II.

THE CRIMINAL CLASS.

The Law of Criminal Saturation—Decrease of Crime during Historical Period—Who Compose the Class—Present Constancy of its Numbers—Variation in its Numbers on Account of Variation in Laws—Necessity of Comprehensive Treatment—The Five Cate- gories—Their Characteristics—General Appearance and Char- acteristics of this Class—Presumptive Criminals—Subdivisions Pathological—Sources and General Causes—Nature of the Dis- ease and Sanitary Measures	15
---	----

CHAPTER III.

CRIME.

Crime Defined—Three General Classes—Purview of Human Law is Social—Classification by Objective Nature—Distinction between Crime and Criminality—Moral Depravity the Source of Crime— Depravity a Disease—Sources of the Disease—Immediate Causes—	
--	--

Intrinsic Causes—The Synectic—The Proegumenal—The Procatartctic—The Method of Cure—Criminal Responsibility—Extraneous Causes—Want—Changes of Laws and their Enforcement—Neglects and Defects of Child Training—Statistics of Illiteracy—Concentration of Population—Unrestricted Propagation of Criminals—Necessity of Prevention—Number of Convicts does not Measure the Quantity of Crime	PAGE 30
---	------------

CHAPTER IV.

THE DETECTION AND IDENTIFICATION OF
CRIMINALS.

The Criminal at Liberty the Danger— <i>Heredity and Human Progress</i> —All Criminals to be Kept Confined—Scientific Treatment in Prison—Skilful Diagnosis Essential to Cure ; to Future Prosecution—Identification of Presumptive Criminals—The Bertillon System—Methods and Details of—Explanation of its Use—Proof of Accuracy—Indispensable Advantages—National Bureau in America—Importance and Value—Number of Signalments in France, 1899—A System—Use to Prevent Immigration of Criminals—Census Signalment	52
---	----

CHAPTER V.

CRIMINAL CODES.

Origin of the Criminal Codes—Unscientific Development of them—Consequent Futility, Shown by Recidivism—Theory on which they are Founded and of Severe Penalties, False—Theory of Punishment Inutile—Abuse of Legal Privileges—Of Presumption of Innocence—Corruption of Juries—Technicalities Perverted to Delay—Security from Second Jeopardy—Evils of Judicial Discretion—Procuration of Perjury—Irrational Incongruity of Penalties—Murders and Lynchings—The Single Sentence—Criminal Madmen—Instinctive and Habitual Criminals—Single Offenders—The State the Only Legal Administrator of Criminal Laws—Drunkards—Prostitutes—Category of Criminality Disclosed at Trial—The Intermediate Sentence—The Real Province of Criminal Codes—Necessity for a New Code—Proposed System of Penalties—State Administration of Reformatory and Penal Prisons—The Pardoning Power	7
---	---

CHAPTER VI.

THE DEFENSE OF SOCIETY, AND STATE CONTROL OF CRIMINALS.

Recidivists the Main Body of the Hostile Force—The Most Dangerous—Proportion of, among Convicts—Must be Cured before Discharge—Benefits of their Confinement—Necessity of Uniformity in the Criminal Codes of all States—Single and Juvenile Offenders The Presumptive Category—Obligation of the State to Execute its Own Laws—County Jails a Relic of Early Conditions—Their Present Disadvantages—State Care a Duty to the Criminal—Economy of State Care	PAGE 95
--	------------

SECTION II.—THERAPEUTICS.

CHAPTER VII.

LEGAL PENALTIES.

Punishment the Natural Reaction of Violated Law—A Necessary Sequence of Crime—Justice Impossible in Legal Penalties—Penalties Deterrent with Majority—Function of Legal Penalties—Effective According to Restraint and Deterrence—Now Generally Reduced to Fines and Imprisonment—The Death Penalty—Homicides and Executions in the United States—Capital Punishment Most Effective Restraint and Deterrent—Murderers Incapable of Restraint—Capital Punishment no Longer Enacts Public Opinion—Castration for Sexual Crimes—Imprisonment for Felonies—Continuous until Criminality is Cured—Hopefulness of Reformation—Reformatories and Indeterminate Sentence for "Madmen," "Instinctive," and "Habitual Criminals"—First Offenders not to be Imprisoned—Indemnity—How to be Exacted—Simplification of Punishments by Science	III
--	-----

CHAPTER VIII.

THE INDETERMINATE SENTENCE.

Substitution of Reformation for Punishment—Origin and Development of the Reformatory System—Comparison of Results at Elmira and in New York Prisons—Success of Reformatory System Demonstrated by Z. R. Brockway—His Statement of its Principles—Punishment by Reformation the Natural Reaction—The

	PAGE
Theory of Reformation is the Cure of Disease—Time Limits for Cure Absurd—Varieties of the Disease—State of Opinion in the World concerning the Indeterminate Sentence—Physical Obstacles to its Adoption—Metaphysical Obstacles—What the Real Indeterminate Sentence is—Who shall Pronounce the Cure?—Existing Practice Devolves the Decision on Wardens—Objections—Advantages—Objections to Reformatory System Considered—The Tribunal of Discharge and Appeal—To whom the Sentence should be Applied	133

CHAPTER IX.

THE REFORMATION OF CRIMINALS.

Reformation versus Punishment—Reformation Constitutes the Science of Penology—Its Scientific Basis—Its Philanthropic and Economic Objects—The Five Vital Elements—General Characterization of Criminals by Brockway—Necessity of Classification—Principle of Classification Adopted by Brockway—The Law of Habit—Correction of Evil Habits—Physical Line of Direction—Mental—Moral—The Physical Means Used—By the Physician—By the Superintendent—Routine at Elmira—Cure of the Minor Defects of the Seriously Defective—General Defectives—The Dietary—Technical Training—The Military Organization—Discipline—Physical Punishments—Commissary, and Bertillon Records—The Mental Means, and School of Letters—Reading—The Moral Means—Influence of Example—Of the Warden—Moral Training Incessant—The Proper Subjects for Reformatory Treatment—Labor in Reformatories—Conditions of Release—Parole—Experience at Elmira—Necessary Time of Treatment—Reformatories to Separate the Incurable—Incurables to be Consigned to Penitentiaries—Size of Reformatories—Costs—Female Reformatories	158
---	-----

CHAPTER X.

DRUNKARDS AND PROSTITUTES.

Nature of the Disease of Drunkenness—As a Social Crime—Massachusetts Statistics—General Data—National Cost of Drunkards as Criminals—Folly of Existing Treatment—Plea of Drunkenness in Mitigation of Crime—Secondary Cause of Crime—A Crime in Itself—Importance of its Repression—A Curable Disease—Penal Aspects of Drunkenness—State Inebriate Asylums—Laws Needed—Right of Society to Suppress it—Prostitution—As a
--

Contents

xiii

	PAGE
Crime—Evils—Prevalence—The Action Needed from the State— Summary of Benefits to be Derived from State Control of these Crimes	193

CHAPTER XI.

THE CRIMINAL INSANE AND INSANE CONVICTS.

Effect of the Discoveries of Medical Science on Criminal Culpability— Varieties of Insanity—Plea of Insanity in Criminal Trials— Irresponsibility of the Insane—The Criminal Insane—Their Crimes—Professional Scientific Alienists—Doctrine of Irresponsi- bility more Effective Protection than Dogma of Punishment— Idiots—Epileptics—First Recognition of Doctrine of Irresponsi- bility—Second Step—German Code—French Penal Code, and American Practice—Résumé of Legal Precedents—Present Legal Status not Good Law—Expert should Appear for the State— Question of Insanity One of Fact, Requiring Judicial Decision by an Expert—Expert Professional Alienists Needed—Insane Criminals to be Removed from Prisons—Feigned Insanity— State Commission of Alienists—State Hospitals for Insane Crimi- nals—Separate from Prisons—And from General Hospitals for the Insane—Where now Established—Expiration of Sentence of the Insane—When Cured Previous to Expiration of Sentence— Disposition of the Insane under Sentence of Death—Of All Others when Cured—Disposition of Cured Life-term Prisoners	212
---	-----

CHAPTER XII.

THE INSTINCTIVE AND HABITUAL CRIMINAL.

Proportion of Recidivists—The most Dangerous and least Controlled Category—The Reprobates—The Instinctive Criminal easily Identified—How to be Disposed of—The Habitual Offender— Proportion of—An Anomaly of Criminal Jurisprudence—Gener- ally a Non-Resident—Necessity of Bertillon Identification— Product of Social Neglect—Society's Duty to the Discharged Prisoner—The Discharge on Parole	234
--	-----

CHAPTER XIII.

JUVENILE AND FIRST OFFENDERS—PROBATION AND PAROLE.

The most Extensive and Difficult Branch of Penology—Juvenile Offenders Defined—The Criminal Age—Statistics and Deductions	
--	--

	PAGE
—The Problem Stated—Its Solution—Probation Officers—Sentence for Light Offenses—When Severe Measures are Necessary—For Crimes of Lust—For Felonies and Heinous Crimes—Insane and Defectives—The Probation System—Requirements and Advantages—Experience of Massachusetts—Losses by Failure to Use the Privilege—Possible Saving—Arrests for Drunkenness—For Other Offenses—Parole—Duty of State to Discharged Prisoners—How to be Exercised—Conditions of Parole—Probation, Reformation, and Parole	245

CHAPTER XIV.

PRISON LABOR.

The Problem Stated—Public and Legislative Discussions—An Insignificant Item in Industrial Economics—Prisoners should Earn as Much as Possible toward their Maintenance—Concentration of Prison Labor on a Few Products Objectionable—An Important Reformatory and Penal Consideration—Necessary for Discipline—High Concern to Prisoners' Health and Training—Essential Element of Reformation—Obligation of State to Employ Prisoners—The Fundamental Principle—How Tried and Failed—Conclusions of National Industrial Commission, 1900—Conclusions Discussed—Restriction of Hours of Labor—Prohibition of Machinery—Boycott of Prison-made Goods—"State's Use" Plan—Labor in Penitentiaries—Life Convicts in Public Works—Labor in Jails and Reformatories—In Industrial Schools and Asylums—Number of Jail Prisoners in Idleness and Results—Working out Fines as a Remedy—Local Public Work for Short-term Prisoners—General Scientific Scheme of Prison Labor—Social Duty of Employing the Discharged Prisoner	264
--	-----

CHAPTER XV.

THE INSTALLATION AND ADMINISTRATION OF PENAL AND REFORMATORY INSTITUTIONS.

The Kinds of Institutions Enumerated—Police Stations—Workhouses—County Jails—Who should be Committed to Jail—Location and Construction of—Industrial Schools—For Boys—For Girls—Reformatories—Administration—Female Reformatories—Inebriate Asylums—Criminal Insane Asylums—Penitentiaries—Location—Accommodations—Discipline—Corporal Punishment—Dietary—The Wardens—Prison Laboratories—Summary	28
---	----

SECTION III.—HYGIENICS.

CHAPTER XVI.

POLICE PREVENTION.—PROHIBITION OF THE MARRIAGE OF THE UNFIT.

	PAGE
Excessive Arrests—Proportion of Convictions to Arrests—Illustrated by Boston Statistics—Possible Saving—Municipal Police a Survival of Medieval Necessities—Has Become the Chief Instrument of Enforcing Law—Logically a State Force—Should Execute all Constabulary Functions—Its Use in Riots—Organization and Discipline—Relief of the Military—Other Advantages—Care over Children in Public Places—The Prohibition of the Marriage of the Unfit—Constitutional Power of the State—Heredity—The Contrast of the Edwards and the Jukes Families—Such Processes Constant—The Preventive Legislation Necessary—Advantages to be Secured	311

CHAPTER XVII.

PRESUMPTIVE CRIMINALS : THE MINOR WARDS OF THE STATE—DEFECTIVE, DELINQUENT, NEGLECTED, AND ABANDONED CHILDREN.

Necessity of State Care over All Children—Presumptive Criminal Source of Three Fourths of the Criminal Class—Training of Children Easier than Reformation of Criminals—The State alone Competent to Treat this Class—State Care not necessarily Institutional—Modern Family Cottage Institutions—Authority of the State Superior to that of the Parent—The Subdivision of Minor Wards of the State for Treatment—Legal Prohibitions Needed—Juvenile Courts—State Boards of Children's Guardians—Their Duties and Powers—The Five Classes of State Juvenile Institutions—Truant Schools—Industrial Schools—State Children's Aid House—State Orphanages—Children's Hospitals—Five Kinds of Asylums Needed—Evils of State Subsidies to Private Institutions—Illustrated by Experiences in New York—Census of Children under Charitable Care—Results of Private Charity in Child Saving	332
---	-----

SECTION I.
DIAGNOSTICS.

SECTION I.

DIAGNOSTICS.

CHAPTER I.

THE SCIENCE OF PENOLOGY DEFINED.

The Social Sciences—Penological Science—Its Province and Objects—Its Importance—Number of the Criminal Class—Social Cost of Crime—Necessity of a Reformation in Treatment of Criminals—Subdivisions of the Science—Diagnostics—Therapeutics—Hygienics.

“ART is long,” but science is perpetual, ever living, ever growing. The life of art is but the sap of science. Art is the flower which blooms on the tree of science, but the tree is perennial; slow of growth and everlasting. Time adds layers of strength to its trunk, new branches to the ever expanding body, and forever feeds its vitality but brings to it no germ of decay. This is the tree of human knowledge, whose unfolding leaves are for the healing of the nations. Science is an intellectual energy which is never lost. The expansion of sociological science has been greater in the last quarter of the nineteenth century than in all preceding time. Civilized mankind enters the twentieth century with a much greater knowledge

of and more general interest in the laws which affect the commonweal than it has ever before possessed. "Know thyself" is the primordial basis of the efficiency of science to society as well as to individuals, so that humanity has now acquired an unprecedented power over its own welfare. The laws of cause and effect are recognized as operative in social as well as in material nature. Sociology is admitted by common consent into the ranks of the positive sciences, both as a whole and with its subsidiaries,—history, religion, jurisprudence, economics, politics, ethics, pauperism, hygiene, medicine, charities, criminology, penology, and others. But while many of these elementary branches have been organized and perfected for human use, and a vast fund of information and experience accumulated concerning Penology, which is in fact the main trunk of sociology, no complete and independent statement of the theory and system which is the natural product of this accumulation of knowledge has yet been made. This is the more surprising when we consider that it was the first rod of regulation which grew out of the virgin soil of social existence. When, in the very beginning, several human beings became associated together, a law protecting individual life and rights was necessary, and enforced by penalties. Protection from violence and crime was the origin of all law,—the subject which engrossed the attention of the earliest lawmakers of every people and which has been most constantly before legislators until the present

time. Penology was not only the origin, but it is the basis and the object of all human law, the stem, as we have said, from which all the social sciences branch. Scientists, statesmen, philosophers, and penologists have apparently been allured away from the main subject by the attraction of discovery and novelty in special directions.

Penology may be defined as the science of the protection of society from crime by the repression, reformation, and extirpation of criminals. It consists of such positive knowledge of these subjects as is comprised in the whole body of scientific observation, investigation, experimentation, and reasoning upon its particular phenomena; co-ordinated, arranged, and systematized for the use of mankind. It is the discovery, formulation, and explanation of the immutable laws which govern and regulate successful action for the defense of society against criminality. This knowledge is now sufficiently extensive and exact, and the consensus of intelligence concerning these laws and principles ample enough, to warrant the presentation of a distinct system which will constitute a complete and independent science. "Prison science is working out, as it can, in the present progress, a methodical system of Penology which is in accord with the true science of our common human nature."¹ As knowledge expands, a return to specialization becomes necessary for achievement. The natural limitations of the brain

¹ *The Reformatory System in the United States*, International Prison Commission, 1900, Z. R. Brockway, p. 27.

and intellect restrict the capacities of individuals, while the general diffusion of intelligence stimulates competition, increases the requirements of success, and compels a concentration of effort along particular lines in order to overcome existing conditions. Generalizations cease to be impressive or inspiring. Specific statement, definite principles, positive laws, and complete system are essential in every department of science.

This has become especially important in Penology, where the dense outgrowth of legislation has almost hidden the original purpose, while the investigations of sociologists and criminologists have developed and clearly demonstrated the nature and causes of crime and criminality, the several physical, mental, and moral characteristics of the criminal; and experience has proved the absolute failure of criminal law in the past to attain its objects. It is manifest that criminal law and codes are the sporadic growths of past social circumstances and necessities, without any consistent theory or principle; devoid of order, harmony, or system. When any particular crime became prevalent or annoying to society, a penalty was offset against it, in the hope, which has proved vain, of preventing its commission through fear of the penalty. Criminal codes as they exist are, in the light of twentieth-century intelligence, a conglomeration of penalties of various degrees of atrocity, irrationality, absurdity, and inutility. They are the relics of blind social struggles against social evils, useful chiefly as

antiquities, to be collected with thumb-screws, iron boots, racks, and torture wheels in museums. To provide an efficient substitute for these codes, to enunciate the principles upon which a successful defense of society against crime must be conducted and the abolition of criminality accomplished, is the special province and object of Penology.

Its importance is subjectively very great because the criminal class terrorizes and preys upon society universally, and imposes on it a tax for protection enormously disproportionate to its numbers; although objectively the class constitutes an insignificant part of the social whole. According to the United States census of 1890, there were then thirteen hundredths of one per cent. of the population confined in reformatories, jails, and penitentiaries. If, as is assumed by sociologists, only one of ten of the criminal class is under confinement at any one time, the whole criminal class averaged but one and three tenths per cent. of the population in 1890, or 13,170 persons in the million. Of the 47,413,559 people ten years of age and over, there were two hundred and five thousandths per cent. in confinement; which would make the criminal class a somewhat larger proportion of that part of the population from which it was entirely derived, or nearly one and three quarters per cent. The number of male convicts was thirty-one hundredths per cent. of the male population ten years old and over; which would, upon this assumption, imply a criminal class amounting to

three and one tenth per cent. of the males of that age.

Although no general census of the criminal class has ever been attempted, and from the nature of the case is quite impossible, we have some statistics which are a basis for calculation, and which support the assumption of the criminologists that only one in ten of the class is in confinement at any one time. The untried prisoners held in confinement on the 30th of September, 1897, in the State of Pennsylvania numbered 3210; there were committed during the year 69,517; a total of 72,727: of these 5824 were convicted during the year. Thus eight per cent. of the persons tried for crime in that State from September 30, 1897, to September 30, 1898, became convicts.

In Massachusetts the arrests during 1898 numbered 99,336. The convicts in confinement September 30, 1899, were 6765, or six and eighty-one hundredths per cent. of arrests.¹ Of the 424,410 persons estimated to be arrested for other crimes than drunkenness and prostitution in the United States during 1899, 44,897 were convicted; somewhat over ten per cent.² Of course many of these arrests were of the same individuals, and some of them, doubtless, of innocent persons, but it is unlikely that any one was arrested unless a crime of which he was accused had been committed by some one, so that each arrest of a different person represented a criminal at the time, whether the right one was arrested or not.

¹ *Massachusetts Prison Association Bulletin No. 12.*

² Appendix A.

It is a common observation, also, that many crimes are committed for which no arrests are made, which must be charged against the criminals at large. Besides the crimes which are publicly known, there is a large number of secret, hidden, and undetected crimes, which remain unknown to the public: such as small thefts, misdemeanors, sexual crimes, violations of license laws, drunkenness, gambling, frauds of all kinds, cheating in trade, bribery, perjury, and political corruption. The existence of these is notorious, but for various reasons they cannot be legally proved, or are, at least, not attended by arrest and conviction. Statistics of arrests and convictions are the legal evidence which appear on the surface,—the scum arising from the continual ferment going on in the social sediment.

The number of criminals in confinement, moreover, causes no apparent reduction in the number of crimes committed, and affords no sensible relief to society. The assumption, then, that the criminal class is at least ten times larger than the number of convicts confined at any one time seems rational, and warranted by the known facts. More than ninety-two (92.23) per cent. of this class are, however, males,¹ and a large majority of them in the full vigor of manhood; which accounts for some part of their excessive damage to society. "In New York seventy per cent. of adult felon prisoners were, when convicted, under thirty years of age."²

¹ United States Census, 1890.

² Z. R. Brockway, *Annals National Prison Association*, 1898, p. 19.

The reported State and county costs of the arrest, trial, and maintenance of persons accused of crime in one interior county of Pennsylvania, where the writer was able to make a careful examination into items, amounted, in 1899, to \$135,822.17! The number of persons convicted was 154. The cost of crime, therefore, in that county averaged \$881.96 per convict. If we add the cost of police in the cities of that county (\$57,760), it would be \$1259 per convict.

The Massachusetts Prison Association states in Report No. 12, for 1899, that the number of prisoners in confinement on the 30th day of September, 1899, in that State was 6765, and that the cost of crime paid by State, county, and city taxation during 1898 was \$4,737,678, which is an average of \$700.33 per convict. The number of arrests was about 100,000 and the cost of each, therefore, averaged nearly \$50. The number of commitments, 29,796, used as a divisor, makes a cost of \$162.25 each. Deducting 16,114 commitments for non-payment of fines, the average expenditure for 13,672 convictions was \$346.57 each. If we consider the additional cost of the private watchmen, fees of constables, justices of the peace, and aldermen, the loss of time of witnesses and jurors, the fees of lawyers, and other costs not defrayed by taxation the average would probably exceed \$1500 per convict throughout the United States. At this average the cost of the criminal class to the people of the United States, based upon the number of

convicts in reformatories, jails, and penitentiaries by the census of 1890, amounted then to the prodigious sum of \$123,493,500 per annum. This sum is more than a third of the cost of the United States Government at that time, including pensions. To this must be added the value of what is stolen by criminals, the losses by felonies, arson, and malicious destruction of property, the cost of the militia, the ordinary defense of property and persons, the services of executive, judicial, and legislative officials, and the restriction of profits in business. Some writers estimate an average cost of at least \$3000 per convict. Dr. Eugene Smith, a distinguished lawyer and penologist of New York, and for many years an officer of the National Prison Association, in a very exhaustive and conservative paper on "The Cost of Crime," read before the congress of the Association in September, 1900, deduced from his examination into the costs of crime defrayed by taxation in the State of New York, an estimated direct cost in the United States of \$200,000,000 annually. The indirect, concomitant, consequential damages and burden laid by it upon the people of the United States in 1900 he estimated at \$400,000,000, making the total present money burden of crime in this country the enormous sum of \$600,000,000 a year.¹

Seldom a year passes in which taxpayers do not expend \$100,000, and sometimes several hundred thousand dollars, to convict a single criminal. The

¹ *Report of National Prison Association, 1900.*

Chicago *Tribune* sums up a total of reported embezzlements, forgeries, defaults, and bank wreckage for the year 1899 of \$8,622,056. It is a debatable question whether the existing methods for the defense of society against the criminal class do not cost it more, amounting as they do by Dr. Eugene Smith's estimate to nearly eight dollars a head for every man, woman, and child in the land, than would the entire abolition of the penal codes, and the complete liberty of the criminal class.

It is a reproach to the intelligence of the age that it has made no efficient, systematic effort to correct this great evil; that it continues contentedly skimming the surface instead of checking the fermentation. The widely published history of the experience of the past in dealing with crime; the searching investigations of scientists into the physical and psychical conditions of the criminal; the discussions and rational conclusions of penologists, now indicate unmistakably and plainly the principles and system upon which a successful and economical treatment of the criminal class must be based.

In our system of self-government, where the will of the majority rules and enacts laws, popular instruction and agitation are the essential elements of all legislative and social reforms. The will of the majority not only enacts the laws which define crimes and prescribes the treatment of criminals, but establishes the plane and exhibits the state of morals in the community for the time. The enacted law does not make, so much as it marks, human progress. It

has become necessary for the American people to require now of their legislators such a revision and reconstruction of our penal codes as will fix and establish their basis upon the scientific data of the twentieth century. The reason why this demand has not yet been made effective is doubtless the lack of popular comprehension of its great importance, and of the practical remedies which the specialists have discovered ; due to the fact that they have not heretofore been separated from confusing associations, or systematized by themselves.

The science of Penology, specialized to remedy this, is naturally divided into three departments or sections : Diagnostics, Therapeutics, and Hygienics. In the first section the science itself is explained ; crime defined ; the criminal class identified ; the several categories or species of criminals designated ; the methods of detection, identification, and first treatment of individuals specified ; and the social conditions which conduce to criminality disclosed. Therapeutics is that section of the science which relates to the defense of society against the criminal class ; it states the principles which regulate its repression, and formulates the laws governing the treatment and cure of criminals ; fixes the disposition which is to be made of convicts according to their character ; and specifies the remedies applicable to different phases of criminality. Lastly, in the department of Hygienics, the sources, origin, and causes of crime and criminality are designated ; and the measures specified which are necessary for the

restriction and final extermination of the criminal class from society. The prophylactics of Penology constitute the most important and fruitful branch of the subject in its general sociological relations, and it has consequently been more directly connected hitherto with the science of sociology. It is, however, manifestly improper to confine the operations of a special science, which must be complete in itself, to the results of recognized tendencies, disregarding their origin, propagation, and culture. Crime cannot be prevented or criminality eliminated from the social organism by waiting to cut off the criminal after the crime has been committed. The possible criminal must be caught and rendered harmless before he can act ; the constant reinforcement and recruiting of the criminal class must be checked at its source. The supreme object of Penology is to prevent crime, not to punish for it. It is similar to the science of medicine and surgery in that its province is not only to cure specific cases of disease, but also to prevent the genesis, recurrence, and spread of disease. The disease of criminality must be abstractly investigated, treated, and controlled by measures of the same kind as those which have dealt successfully with the other great maladies afflicting humanity. It will be subdued if at all, and so far as is possible, just as smallpox, cholera, yellow and typhoid fevers, diphtheria, and tuberculosis, those once incurable and terrible diseases, have been—by scientific investigation and the discovery and application of appropriate remedies and prophylactics.

CHAPTER II.

THE CRIMINAL CLASS.

The Law of Criminal Saturation—Decrease of Crime during Historical Period—Who Compose the Class—Present Constancy of its Numbers—Variation in its Numbers on Account of Variation in Laws—Necessity of Comprehensive Treatment—The Five Categories—Their Characteristics—General Appearance and Characteristics of this Class—Presumptive Criminals—Subdivisions Pathological—Sources and General Causes—Nature of the Disease and Sanitary Measures.

IT has been impossible to determine from available statistics either the exact proportion of the criminal class in any community, or whether crime is increasing or decreasing under present conditions.¹ But the investigations of students establish the existence of a constant class disposed to crime in all civilized lands ; varying in numbers according to different physical conditions and social environment, the prevalence of hereditary tendencies, and susceptibility to occasional impulses, in obedience to a law which Prof. Ferri in his *Criminal Sociology* calls, in analogy with chemical phenomena, the "Law of Criminal Saturation" ; that is, society under similar conditions has always a certain proportion of identified and possible criminals. In

¹ *The Criminal*, Drähms, p. 265 ; "Is Crime Increasing?" Prof. Falkner, *The Forum*, July, 1900.

accordance with the same law, it has a certain proportion of insane, blind, deaf, epileptics, drunkards, cripples, feeble-minded, invalids, sick, as well as healthy, strong, and extraordinarily capable members. The former are the effete residuum, the social culls of human progress.

The original barbaric man knew and obeyed no law save the instincts of his own uncontrolled desires. His whole nature was what we now call egoistic, and in essence criminal. As there was no law he could not be fairly termed what we now call criminal, but whatever law crossed his will he broke for that bare reason alone, if for no other. The whole human family were once as lawless as tigers. We now consider "lawless" and "criminal" to be synonymous terms. According to our present conception and understanding, all mankind was once of the criminal nature and class. Savage races even now have slight, if any, consciousness of right or wrong. We may assume, then, as we have shown that the criminal class does not exceed two per cent. of the people, that civilization and religion have in their highest development successfully overcome ninety-eight per cent. of the natural criminal depravity of mankind and reduced it to a small and controllable number. This is a very decided decrease within the historical period.

The criminal class, however, is not differentiated from the other social elements so as to be readily distinguished, as are the other classes which have been mentioned. It consists of individuals in every

rank of society, with corresponding variations and grades of character, intelligence, education, morals, habits, mental and physical endowments. The comprehensive anthropological and psychological examinations made by skilled scientists have so far failed to establish any invariable diagnosis of criminality previous to the overt crime. They have demonstrated that a large proportion of criminals possess certain peculiar physical, mental, and moral characteristics; but not that all possessing such characteristics are criminals. It has been found, besides, that not even all of those who have been convicted of crime belong to the criminal class.

What, then, is the criminal class in society? It is absolutely necessary for scientific discussion that we should have an accurate and comprehensive definition of what is meant by this term. We may say, generally, that the criminal class is composed of all those members of society whose dispositions and acts are hostile to its welfare, to its order, to its laws and customs, and to the rights of its members. It includes those who have been convicted of crime; those who have committed crime and escaped detection or conviction; those in whom the disposition to crime exists; and all youths or children whose heredity or environment predisposes them to become criminals. Specifically, it consists of all those who from physical deformity, mental incapacity, or moral depravity are either unable or indisposed to regulate their lives in conformity

with the laws which have been enacted for the welfare of the community in which they dwell.

We define crime as an act punishable by law. Therefore, as laws differ in different social organizations and change in the same nation from time to time, there is produced a material variation in the statistical proportion of the criminal class by the very laws themselves, quite independently of individual character. Much of the confusion and apparent contradiction of criminal statistics is due to neglect of the proper consideration of contemporary laws.¹ Other variations in the prevalence of crime and the proportionate number of criminals are to be attributed to differing degrees of vigilance and efficiency on the part of officers in the detection and arrest of offenders, and to changes in the pressure of want and necessity upon the social body. Short crops, hard times, and lack of employment, force some over the line of honest livelihood temporarily, while prosperity, with full employment, attracts back again the moral weakling. All the information which has been collected confirms the generally accepted belief that the criminal class in society has continued without substantial diminution for many years. It has effectually resisted, of late, all the effort which has been made for its control, and reduction in numbers except possibly in Great Britain, where the records show recently a reduction in convictions for crimes. The prevalence of crime has varied with the

¹ See *Practical Sociology*, Wright, p. 356.

changes of laws without any apparent difference in the proportion of criminals in society.

The social organization, then, is grievously afflicted with a malady which objectively affects less than two per cent. of its members ; a proportion which remains substantially constant, and has successfully resisted the most strenuous efforts for its restriction. An unscientific and impotent contest with the malady imposes upon society one of the heaviest burdens of taxation. The importance of an intelligent and exhaustive study of that small class wherein this affliction originates is manifest. It has been undertaken and patiently pursued by capable and learned men abroad and at home. Much knowledge has been acquired and various theories evolved connected with the criminal and criminality which it is unnecessary to consider in this connection ; but one general conclusion is derived from these investigations which may be termed axiomatic : it is the absolute necessity of a comprehensive treatment of the whole body of criminally diseased as a class ; just as society deals with the insane, or the deaf, blind, or any other particular class of its components. Criminality cannot be suppressed or restricted by neglecting action until the crime is committed, any better than cholera, smallpox, or typhoid can be by inattention until it is necessary to call the doctor. It is a penological law that pernicious heredity must be checked, corrupting environment corrected, social sustenance protected from infection with the

microbes of crime, the malaria-breeding Anopheles of riotous desire discovered, and the whole social system inoculated with the anti-toxic serum of moral culture in order to become immune.

The scope of penal legislation, to be rational and effective, must comprehend the whole criminal class; its origin; its constituents, its ætiology, and its therapeutics.

The detected-criminal class has been divided by Dr. Drähms in the latest and most exhaustive treatise upon the criminal into three categories¹: 1. The Instinctive Criminal. 2. The Habitual Criminal. 3. The Single Offender. This division is, he says, "all-sufficient for all practical and scientific ends, as it ostensibly combines more harmoniously both the genetic and concrete descriptions of the true criminalistic concepts without the continuous overlapping so characteristic of the ultra refinements of the schools, that serve only to confuse the subject."

Penology has to deal with these three categories of criminals, and a much larger and more dangerous one, which we will designate as that of "Presumptive Criminals." This last category is constituted of that part of the class which is at large in society, the undetected, and those who are too young for conviction, but are the victims of a bad heredity or environment which will certainly in the process of time, if not corrected, develop into criminality. Accurately speaking, of course, the "Presumptive Criminal" is not a criminal, as he is not under

¹ *The Criminal*, p. 56.

conviction of law-breaking. Upon his first conviction he will naturally fall into the category of "Instinctive Criminals," because of his nature and disposition; but he is not included in this category until then, although he must be comprehended in the general class with which penal legislation deals, and to which he makes a very important numerical and genetic addition.

"Criminal Madmen" is Prof. Ferri's first category of this class; which is rejected by Dr. Drähms as a proper subdivision upon ethical grounds, because the fact of insanity relieves the transgressor from the guilt of criminality for his act. If he is a madman he cannot be classed as a criminal, he claims, but must belong to the insane class. But "Criminal Madmen" are nevertheless included among the reported number of convicts in confinement, which is the basis of calculation concerning the proportions of the criminal class; and they should therefore be accounted for separately and dealt with specially. Some of this category are in detention, having escaped sentence on account of insanity; others are convicted criminals who have become insane in prison. None of them can be properly assigned to any other category. They must be recognized as a special division. True science must give preference to facts over theories. A categorical analysis of the entire criminal class must therefore include both "Criminal Madmen" and "Presumptive Criminals." Accepting Dr. Drähms' nomenclature and subdivision as

preferable for diagnosis and correct as far as it goes, we find the social element of criminals composed of five categories in about these proportions :

I. Criminal Madmen	5 to 10 per cent. (Prof. Ferri.)
II. Instinctive Criminals	} 40 to 50 per cent.; being composed of Prof. Ferri's "Born" and "Habit" categories.
III. Habitual Criminals	
IV. Single Offenders	All other convicts.
V. Presumptive Criminals.	

Dr. Drähms has so philosophically described the second, third, and fourth of these categories in their psychological, physiological, hereditary, and environmental aspects, with full quotations and references to all the prominent authorities, in his profound study, *The Criminal*, published in 1900, that it is unnecessary to add anything more than a reference to his great work in explanation of their origin and character. The Instinctive and Habitual Criminals are proved to be criminals by nature; they are victims of a depraved or a corrupting early environment or defective heredity. A very large proportion of general insanity is traced to the same source. Science therefore establishes bad heredity and environment as the almost exclusive origin of this half of criminal humanity.

"Single Offenders," who constitute the remainder of the detected class, are less distinctively marked by a depraved nature; but they are, notwithstanding this, no less certainly differentiated from the

standard character of honest self-control by their very yielding to the criminal impulse. Honest morality is maintained in the individual by the dominance of the altruistic elements of character over the egoistic. That enfeeblement or deficiency of self-control which allows even a single criminal transgression is an indication, or demonstration rather, that the transgressor is abnormal, deficient in some essential quality of honest manhood. Lombroso says (and Ferri, Benedikt, and Drähms corroborate him) :

“There is, properly speaking, no such thing as an ‘occasional criminal,’ in the sense of a normal individual casually launched into crime. . . . An isolated act, whatever its nature, though apparently standing isolated and without apparent provocation or psychological antecedent, may nevertheless be associated with a line of predisposing causes of which this single overt act is but the climax : it may be traced to antenatal or otherwise criminalistic causal relations as clearly defined as in previously cited distinctively criminal cases.”¹

The “Single Offender” then is also a moral defective, either by nature or education. Investigation by scientific analysis substantiates the conclusion of common sense that the criminal class as a whole is the result of tainted heritage or faulty development.

Although the immense amount of scientific examination which has been expended upon the criminal by learned penologists has failed to discover any universal physiological signs by which he may

¹ *The Criminal*, pp. 197, 198.

be identified without the criminal act, or to establish the existence of any distinct type of criminal humanity ; yet, when viewed in large masses, such as are to be seen in all great prisons, criminals impress by their general appearance even the casual beholder with the conviction that they all have a general resemblance and are different from and inferior in physique and expression to the mass of mankind. The possible variations are so many, so diversified, often so minute, that neither singly nor in association can they be denominated as invariable brands of criminality, or be made to distinguish the criminal from the normal man ; but all criminals have some of them. They are either physically deformed, defective, undeveloped, psychically warped and depraved, or all these united. Moral depravity is the only universal characteristic of the criminal class. Its impress upon the physique, the physiognomy, and demeanor of individuals is the only reliable indication of membership, except the actual crime. Moral depravity is the sum and substance of criminality, the fruitful womb of the criminal class. The sterilization of this fountainhead of crime must be the chief and ultimate object of all penal codes. Of 10,000 convicts examined by Mr. Brockway at Elmira, he states that 28.8 per cent. were "non-moral, having no vestige of the sense of pity or probity ; 43.1 per cent. were immoral below the average of safe inhabitancy ; 22.6 per cent. normal, as usual ; 5.5 per cent. supersensitive or abnormal." Science

then settles on this theorem as the fundamental principle of penal legislation :

Criminal codes must be designed to reform the moral depravity of culprits.

“ Presumptive Criminals ” constitute the stream of supply which maintains the statistical level of the criminal class under full head against the draft of codes and prisons. This stream nullifies and overwhelms all the social effort which has been made for its restriction and reduction hitherto at the flood of its tide. The manifest futility of these efforts has directed the attention of science to measures for its control and diversion into innocuous or beneficent channels at its sources, in its ductile and manageable stage. This category is largely composed of the offspring of criminals and depraved parents : defective, orphaned, illegitimate, abandoned, neglected, and incorrigible children, the progeny of debased poverty enveloped in an environment of corruption ; together with juvenile offenders whose age prevents their conviction and imprisonment. It is evident that there can be no substantial diminution of the class until all these are turned from their evil ways. Many of them have inherited the criminal taint ; the rest are becoming saturated with it from their surroundings. Their environment arrests the development of the altruistic moral faculties, and stimulates into abnormal growth the selfish immoral instincts. As the progress of civilization and the condensation of population is largely

responsible for this product, and society must suffer for it and bear the burden of its refined criminality, it is incumbent upon society to assume its care in the plastic age and exert itself to train it up into good citizenship. It is an edict of our science,

That society must assume parental functions over all children lacking proper parental training, unless it can compel the parents to perform their duty.

The disease of criminality has one absolutely un-failing, positive symptom, which is crime. A person may be afflicted with the disease before it has been detected, but when this symptom has been discovered it is positive evidence of the presence of the disease; and the patient must be at once committed to the care and treatment of skilled doctors. Unless this is done the disease will in almost every case progress in virulence, or become chronic and incurable. The earlier in life the criminally diseased can be subjected to proper curative treatment, the better will be the prospect of cure. The subdivision of the criminal class which has been given is pathological. The categories are distinguished from one another by the variety of the disease displayed by the individual, in order that therapeutic measures may be adapted to the special requirement of each subdivision; just as insanity is subdivided by its different manifestations into the categories of mania, monomania, dementia, paresis, paranoia, etc.

To a depraved constitution inherited from

depraved parents, called Heredity, and a birth and growth in the midst of evil and corrupting surroundings, called Environment, are attributed about half the criminal class. Drunkenness, prostitution, the neglect of parental training of children, parental abandonment, orphanage, the immigration of the depraved from other lands, constitutional deterioration by luxurious and vicious living, ignorance, a partial education, irreligion, incompetence for, or an aversion to, continuous work, social conditions producing a superstimulated desire for indulgences honestly unattainable, ungoverned passions, and perhaps the popular American sentiment of freedom and independence encouraging an inordinate egoism, selfish importance, and defiance of restraint—these are the principal social sources and causes of criminality in our country.

The disease of criminality is diagnosed in the abstract as the domination of inordinate egoism or selfishness over a character having inferior or enfeebled altruism, ethical consciousness, intelligence, and energy. The cure will depend upon the success of intelligent effort to develop, make healthy and strong the physical, the altruistic, and the moral nature ; and to establish the control of the latter over character. It is necessary to detect and place in hospitals every infected individual in the social organism before his criminality becomes chronic, not only in order to restrict the continuous contribution of Heredity and Environment to the class, but to prevent contagion, and ravage. This

duty devolves naturally upon magistrates, the police, philanthropists, and ministers, whose duties bring them into contact and close relation with all the people. Homeless, neglected, and delinquent children, idle and ungoverned youths, and juvenile offenders must be rescued from their pernicious environment and subjected to a general hygienic treatment ; the children trained in country family kindergarten cottages until they can be placed out by child-saving societies in families ; and the youth in industrial schools, where the more vicious can be separated from others, and their corrupting influences restricted. These are the primary departments of criminal reformation. The earlier the depraved or defective patient can be placed in them the greater will be the chance and hope of cure. The imprisonment of children and youthful offenders in association with vicious and hardened criminals, as it is generally done now by courts, our science abhors as a social and economic crime of terrible gravity. It is its law :

That criminal jurisprudence must provide for the proper separate care and training of neglected and delinquent children and juvenile offenders.

It is the province of science to discover and announce the laws, and of preachers, philanthropists, sociologists, and political economists, from the pulpit, the rostrum, and the press, to educate the public into a knowledge and acceptance of the fundamental principles which govern the subject. Then, when popular sentiment has compelled what Buckle calls

“the most useful of all legislation, the repeal of former legislation,” and the enactment of an entirely new and comprehensive code of criminal law in accord with these principles, some positive and useful results will ensue from the tremendous struggle with the criminal class.

CHAPTER III.

CRIME.

Crime Defined—Three General Classes—Purview of Human Law is Social—Classification by Objective Nature—Distinction between Crime and Criminality—Moral Depravity the Source of Crime—Depravity a Disease—Sources of the Disease—Immediate Causes—Intrinsic Causes—The Synectic—The Proegumenal—The Procatartctic—The Method of Cure—Criminal Responsibility—Extraneous Causes—Want—Changes of Laws and their Enforcement—Neglect and Defects of Child Training—Statistics of Illiteracy—Concentration of Population—Unrestricted Propagation of Criminals—Necessity of Prevention—Number of Convicts Does not Measure the Quantity of Crime.

CRIME is defined to be an act or omission which the law punishes in the name of and on behalf of the State, whether because expressly forbidden by statute, or because so injurious to the public as to require punishment on grounds of public policy. It is an act punishable by law. In its general term "It includes every offense, from the highest to the lowest in the grade of offense, and includes what are called misdemeanors as well as treason and felony"—(Taney). The latter are commonly called "high crimes." Violations of municipal regulations are not generally spoken of as crimes.

Justice Breese of the Supreme Court of Illinois, declares :

“A criminal offense consists in the violation of a public law, in the commission of which there must be a union or joint operation of act and intention, or criminal neglect, and the intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.”

Sir J. F. Stephen states that

“Criminal Law is that part of the law which relates to the definition and punishment of acts or omissions which are punishable as being :

“1st. Attacks upon public order, internal or external.

“2d. Abuses or obstructions of public authority.

“3d. Acts injurious to the public in general.

“4th. Attacks upon the property of individuals or rights connected with and similar to rights of property.”

A crime may be defined more concisely, as an act or omission declared by law injurious to public or private rights or welfare, perpetrated intentionally, by a sane person. The considerations of the intention and sanity of the accused are additions in criminal-law practice introduced by the development of Christian civilization. The fundamental principle of the Science of Penology is, *that all wilful violations of law are crimes of some degree.*

All crimes are divided ethically into three general classes. They may be sinful, as violating both Divine and human law ; or vicious, as violating both natural and human law ; or only legal, as violating only social law. The degree of culpability of the transgressor will therefore vary according to

the class of crime committed. The laws of God and nature are enforced by their own penalties without the aid of human laws, which therefore alone require legal punishment. Much of the failure of criminal law to secure a reduction in crime is due to the neglect of this principle by legislators, and their futile effort to usurp the prerogatives of Divinity and nature in the infliction of penalties. It is a principle of Penology ;

That the proper object of legal penalties is to secure obedience to the law.

Human laws may be designed to enforce the observance of the laws of God and nature for the welfare of society. Indeed, all wise and beneficent laws must conform to the immutable laws of God and nature, but they should not attempt to supplant or usurp the inalienable attributes of God and nature in their penalties. The supreme object of human law is the promotion and protection of the social welfare ; the regulation and government of the relations of mankind so that the greatest good and happiness shall be secured to the general mass with the least interference possible with the freedom of choice and action of the individual. Its purview is confined to the earthly existence of man. It transcends its sphere and function when it attempts to govern or regulate the relations of man with God or with nature. The relations of man to his God are divinely ordained to be personal. Men instinctively resent and oppose even to

martyrdom any human interference in these relations; therefore human law errs and fails when it takes cognizance of the sin or immorality of crime in grading its penalty, except so far as it affects society.

Crimes may be classified according to their objective nature. The relative percentage specified of each class is that given in the Eleventh United States Census, as committed by convicts in confinement in 1890¹:

Crimes against the State or Government.—2.2 per cent. Among these are assassination of rulers, attack upon the Government, insurrection, treason, counterfeiting, bribery and corruption of officials, anarchy, communism.

Crimes against Society.—22.9 per cent. Rioting, disturbance of public peace and order, corruption of public morals, perpetrating or maintaining nuisances, polluting water-supply, violation of election laws, bribery or corruption of voters, destruction of public property, embezzlement or misuse of public funds, malfeasance in office, obstruction of highways, endangering public travel, violations of excise and license laws, disturbance of public meetings, drunkenness, prostitution, etc.

Crimes against the Person.—21 per cent. Murder, homicide, assault with intent to kill, assault and battery, adultery, abortion, duelling, incest, rape, seduction, sodomy, libel, forgery, mayhem.

¹ *Compendium of Eleventh Census*, Part II., p. 192.

Crimes against Property.—45.8 per cent. Burglary, robbery, theft, arson, embezzlement, gambling, fraud, perjury.

Miscellaneous crimes are also enumerated in the Eleventh Census to the extent of 8.1 per cent.

This classification and enumeration of crimes suggests forcibly the wide variation of guilt and culpability which attends their commission. There is not only this great variation between the culpability of different crimes, but there may be also an equal difference in the degree of guilt in the perpetration of any one of them, according to the malice, fraud, negligence, knowledge, intention, will, sanity, and excuse of the perpetrator. Murder, for instance, may be attended with circumstances of shocking atrocity, malice aforethought, and premeditation; or done under great provocation at unjustifiable attack, in sudden passion, without premeditation; or the homicide may be the act of frenzied insanity without any cause or reason. The law regards these circumstances in the punishments imposed, which vary from the death penalty to imprisonments for different terms, and to confinement in an insane asylum. Similar circumstances modify the penalties for other crimes.

All crime is defined and constituted by law. Where there is no law there can be no crime. According as laws differ in different nations and at different periods of history and civilization, crimes are and have been different. Many crimes which were once severely dealt with are now unknown,

and many new crimes have resulted from the methods, activities, and necessities of modern civilization. A full and instructive history of these changes is given in the chapter on Crime in Dr. Wines' excellent book on *Punishment and Reformation*. But that distinguished penologist has there failed, as all criminal legislators have failed, to discriminate the vital and fundamental distinction between crime and criminality. Crime is the detected sign, symptom, and result of a human personal condition. It is the overt act, of which alone the law can take cognizance and from it declare the character of the perpetrator to be criminal. By this the character is diagnosed; but it does not create, or generate, or constitute criminality in the individual. Criminality existed in the accused before he was convicted, and was as virulent then as after the law had pronounced him criminal. Laws have changed and crimes have changed in the progress of civilization; but criminality has remained a constant quantity in the ranks of humanity in all ages and in all lands. The laws may increase or decrease their specifications of crime, and vary the penalties which they inflict upon the guilty, thus altering the statistical number of convicts, without affecting the proportion of criminality among those subject to them. The line between right and wrong is a straight line, fixed and invariable, which divides honesty and rectitude strictly from criminality and turpitude; but human laws vary and change according to the wisdom, honesty, and designs of legislators. If the laws cross

this line on either side they necessarily catch in their meshes some who should go free, and loose some who should be apprehended. Varying social impulses and influences, even, may temporarily cause the edges of the crowds to surge over on either side of this line, but the two masses will never unite, any more than oil and water. No men whose lives are firmly and intelligently governed by righteous principles and obedience to law, commit crimes ; all who are subject to selfish instincts, desires, temptations, uncontrolled passions, perverted judgment, and defective intelligence are liable to commit crimes, whatever the laws may be, or wherever their lot is cast. The number of those who are thus subject to criminality in any particular state of society constitutes that distinct class of which we treated in the preceding chapter.

Why is it that some persons commit crimes and others do not? This is the vital and crucial question, the answer to which must give direction and form to any hopeful system for the defense of society against crime. The accurate solution of this question is the basis of penological science. All biological, anthropological, sociological, philosophical, and theological investigations of criminality have been chiefly concerned with its determination. The knowledge which has been acquired through these studies enables us now to arrive at some scientific conclusions concerning criminality. An examination of the several classes of crimes which have been enumerated suggests that an uncontrolled

selfish desire for personal gratification regardless of others, malice, and ungoverned passion are the general motives for all crimes; that erroneous and misguided opinions and judgment of social conditions and relations are also general incentives or contributory agencies; that deficient moral resistance to the temptation allows the motive to develop into action. The causes, motives, and temptations to crime exert a uniform, universal pressure in every direction upon the whole of humanity like a fluid saturation, the head of which is governed by the state of morals, the customs and laws of the time and place. This pressure breaks out into crime at the points of least resistance. Those who yield to it possess less strength of moral character, less mental power, will, and self-control than the average, or they have an inordinate animal development. They are below the necessary standard of resistance, or have a weak, unbalanced constitution. They are, in brief, morally depraved, or debased. Moral depravity is the sum and substance of criminality,—the reason why men commit crime. It is a positive deduction of Penology,—

That the cause of crime is the moral depravity of the criminal.

The reduction of the volume of crime depends, therefore, upon the successful treatment of the disease, and is in direct ratio to the increase of the powers of resistance of the individuals in the social mass.

Criminal moral depravity is an actual condition

of individual character, not a transitory passion or disposition. It is an abnormal state of the human system ; the normal condition of which is physical, mental, and moral health.¹ We do not mean by the term normal man a perfect man. It has never been extensively claimed that any perfect man ever lived, save Christ only. We define the normal man, for the purpose of criminology and penological science, to be a healthy man, a sane man, an honest man. The normal man possesses such a physical constitution, such mental development, such moral principle, as render him disposed and able to control his actions, his appetites, passions, and evil propensities within the limits prescribed for the welfare of his social environment. The normal man is governed by reason and law ; the life of the abnormal man is impelled, inspired, and controlled by animal desires and passions, delusions, erratic and irrational mental functions, or he is incapable from weakness. Criminal moral depravity is a distinct and easily recognized disease which may be organic or functional, chronic or acute, inherited or casual, curable or incurable, like other human diseases. It is diagnosed from the faulty, erroneous, and wrong functioning of the system. This derangement is produced by some defect or disorder of either the physical, mental, or moral systems, or of two, or all of them in conjunction. The disease is a condition in which the natural, proper, and correct relation between the selfish egoistic and the

¹ *The Criminal*, Drähms, p. 197.

altruistic righteous instincts is disturbed, and the just balance of control is lost. Prudence and honesty are unable to resist the desire for immediate gratification. Malevolence overrules virtue, just as in physical disease destruction of tissue exceeds construction. This is the disease which constitutes that moral depravity of character which we call criminality. It runs the physical gamut from the deformed weakling to the pugilistic athlete, the intellectual scale from idiocy to genius, the moral from total depravity and incorrigibility to religious fanaticism. *It is a theorem of Penology that criminality is a diseased condition of human character.*¹

It is estimated by criminologists that from fifty to seventy-five per cent. of the detected cases of criminality are the result of prenatal causes²; the remainder being caused by insalubrious or deleterious youthful environment, or by defective education. Bad heredity may beget a defective, deformed or diseased physical organism; in which case the mental and moral functions are disordered. Bad environment may arrest the uniform and harmonious development of the normal organs and functions; or may infect, corrupt, and demoralize them. Both produce an abnormal, diseased moral character. Whatever may be the case, the condition is the same in its general character, and is included under the single name of criminality, just as other diseases displaying endless varieties have specific names.

¹ *Practical Sociology*, p. 382.

² *The Criminal*, Drähms, p. 286.

All the immediate causes of crime are either extraneous or intrinsic to the individual. The extraneous causes are the opportunities, incitements, and temptations which his nature is unable to resist. The intrinsic causes are inordinate desires and passions, defective or diseased physical organs, or a weakness of moral character which yields to the power of the extraneous influences. The ultimate cause of all crime, therefore, is to be found in the character of the criminal. Science formulates this law :

That society must secure protection from crime and the social disease of criminality by treatment of individual criminals.

In diagnosing the causes of the disease of criminality in the individual, conciseness requires us to follow the analysis of the physician ; even if we are compelled to use a technical nomenclature. Physicians recognize three kinds of causes of disease : the *procatarctic*, which is an antecedent condition of things outside of the principal cause, facilitating the production of the effect ; the *proegumenal*, or that within the principal cause which either predisposes or directly excites it to action ; and the *synectic*, or continent cause, which is the essence of the disease itself, considered as the cause of the symptoms.

Applying these terms to our analysis we find that moral depravity or degeneracy may be denominated the synectic cause of criminality. This is an abnormal and unnatural condition of the organic

structure of the human system, which necessarily produces faulty and erroneous function. This organic abnormality may be of the physical, mental, or moral system. Physical abnormality is the most readily discovered, and has received the most thorough scientific examination. Mental abnormality, which is also easily observed, varies like the physical in degree and intensity. It is an unsettled question whether mental or moral traits of character are transmitted independently by inheritance to the same extent as physical similarities, except as they depend upon and are governed by the physical constitutional inheritance. We know that intellectual characteristics depend upon the structure of the brain and nervous system, which, like the rest of the physique, is greatly modified by heredity and environment. We know also that morality and honesty are associated with a healthy physique and an evenly balanced, properly cultivated brain ; although we have not yet discovered the exact relations between the three elements of human nature. Some persons are by nature honest, upright, truthful. They have no disposition toward any form of vice. Others refrain from falsehood, dishonesty, and crime by a constant struggle against temptation. Still others maintain the semblance of honesty from a regard for public reputation, without any principle on the subject ; or with the belief that it is " smart " to use honesty and honor as cloaks wherewith to dupe their fellows, while they prey upon them. Next to these are the criminals who

make crime a profession. In the criminal class are found professional embezzlers, forgers, counterfeiters, burglars, thieves, shoplifters, drunkards, murderers, fighters, sexual criminals, political criminals, anarchists, etc., who confine themselves to their special kinds of crime. These species are subdivided into orders which have their regular practitioners. There are house burglars, store and safe burglars, bank burglars, porch climbers. There are thieves of specialties, beyond which they never go : till thieves, house sneak-thieves, pick-pockets, shoplifters, lead-pipe thieves, junk thieves, hotel and boarding-house thieves, and others. It is impossible to resist the conclusion, in view of these known facts, that these varieties of crime are due to natural predispositions, caused by peculiarities of the physical constitution. The synectic cause of criminality is, therefore, defective organism or function.

The proegumenal cause exists in the abnormal relations of the organs, or their unnatural operation. They are unbalanced, without their natural counterpoise of sound judgment. A predominance of the organs of selfish gratification and evil propensity over those of sound judgment and self-restraint predisposes to moral depravity and incites criminal action.

The procatactic causes of moral depravity are those which produce the defective or diseased condition of the human organism, and its faulty functions. Such causes are inherited peculiarities,

arrested development, deficient nutrition, and infection—translated into penological terms, heredity and environment. Faulty function results from the imperfect condition, or the disproportionate powers and relations of the organs, caused by defective birth or development.

The diagnosis of criminality, then, indicates the necessity of restoring the equilibrium or natural healthy relations of the organs by means of which character is manifested. Physical development, mental balance, and moral principle are the cure of the disease. We deduce from this analysis of the causation of criminality in the individual these corollaries :

That the diminution of crime can be effected only by the confinement of all detected criminals until their moral depravity is reformed, and

That the cure of moral depravity in the criminal consists in the elimination of the causes of the degeneration of the organs of character and the restoration of their normal functions.

This psycho-physiological phase of the intrinsic causes of criminality does not necessarily relieve the criminal from moral responsibility for his crime, any more than it relieves him from legal responsibility. He possesses freedom of choice between good and evil ; he has freedom of will to refrain from crime, but lacks will-power to develop that character which it is incumbent upon every one to secure for himself. When temptation or opportunity comes, the criminal desire or passion is too

strong for his weak morality, which should be the conservative principle of his character, and so he yields by his own feebleness of will. The only exception to this is the incorrigible, or incurable instinctive criminal. Possibly he has little more moral responsibility than the insane criminal; although science has not yet so positively determined this as it has in the case of mental insanity.

The causes of crime extraneous to the perpetrator are, in general, of a social or economic nature. First among them is the pressure of want, which varies according to the environment of the individual, and the economic conditions. The criminal may actually need food and clothes; or he may want unearned luxuries, indulgences, social, business, and political privileges or advantages. The variations of this pressure under different social conditions, and in different places, and at different times, produce a corresponding difference in the number of crimes committed by an individual of the same character.

Second: The changes in and multiplication of laws, in the progress of civilization, alter the nature of crimes, and cause a very wide divergence in the manifestations of criminality in different countries, and at different periods in the same country. Dr. Wright cites in illustration the criminal history of Massachusetts between 1860 and 1880; during which period 578,348 sentences were imposed upon criminals in that State, of which 60 per cent. were for liquor offenses of some kind.

The population increased 50.4 per cent. ; the total sentences, 70.4 per cent. ; sentences for drunkenness, 155.9 per cent. ; high crimes, 39.6 per cent. ; all other crimes, 20.1 per cent. In 1870 the total sentences showed an increase of 140.3 per cent. ; and drunkenness 198 per cent. over 1860. In 1875, with an increase of 34.1 per cent. of population, the total sentences increased 144 per cent. ; drunkenness, 271.8 per cent.¹ These mutations of criminality were caused by changes in the license and liquor laws, and in the manner of their enforcement. Alterations in laws are more important as causing remarkable changes in penal statistics than in crime itself.

Another considerable factor of the same kind is the variation of the vigilance of officials in executing the laws at different periods, according to public interest and sentiment. This has not only a restraining influence upon the criminal disposition of individuals, which tends to diminish crime, but also increases or diminishes the record of crime for the period. It is a corollary of penological science :

That the recorded convictions for crime cannot certainly indicate either increase or decrease of criminality, unless we consider concomitant laws and their execution.

The third and great extraneous cause of crime is the inadequate training and instruction of children. This applies not only to the orphaned, neglected, delinquent social waifs in- and outside of public

¹ *Practical Sociology*, p. 354.

institutions, but to all the young of society, both rich and poor ; more particularly to the children of the poor, the mass of the people who depend entirely upon the public schools for instruction. Intellectual education is crowded upon those who attend school almost beyond their ability to absorb it ; but physical, industrial, and moral training are comparatively neglected. The consequence is an abnormal and excessive mental development, often at the expense of the physical and moral nature ; an unnatural condition of the system is produced which predisposes to erroneous and abnormal, possibly criminal, action. The physical and moral powers are not only correspondingly atrophied by neglect, but the desires and wants are stimulated and exalted above their natural social standards. The field of temptation is broadened, its potency intensified ; while the conservative powers of resistance are weakened so that imperfect education defeats the very purpose for which public instruction is provided by the State, and becomes an active deleterious social factor, an actual instigator of crime. The statistics concerning the illiteracy of convicts very clearly indicate that mental instruction alone has no restrictive effect upon crime ; as there appears to be a smaller percentage of illiteracy among convicts than among the communities in which they are found. The United States Census of 1890 shows an illiteracy of 13.34 per cent. of the population ten years old and over ; from which age the criminal class must be derived.

The illiterates in penitentiaries in the U.S. in 1890 were						13	per cent. of total.
"	Western Penitentiary of Pa. in 1899	"	"	"	"	8.39	"
"	Eastern	"	"	"	"	11.38	"
"	Sing Sing	"	of New York	"	"	8.00	"
"	Auburn	"	"	"	"	9.07	"
"	Clinton Prison	"	"	"	"	10.45	"
"	Joliet	"	of Illinois in 1896	"	"	6.52	"

Of 25,701 prisoners committed in Massachusetts during the year ending September 30, 1899, 13 per cent. were illiterate; of 3619 convicts committed to county jails during the year ending September 30, 1899, in Pennsylvania, 11.25 per cent. were illiterate. These figures are taken from official reports. Lombroso found 95 per cent. of 507 criminals possessed of elementary education, when only 69 per cent. of the population were literate. Dr. Ogle, in a recent report, gives the percentage of illiteracy in Great Britain at 15 per cent., while that of its convicts is but about 10 per cent.¹

Ignorance is also, of course, a cause of crime; as are indolence, idleness, unfitness for profitable work, intemperance, licentiousness, and other vices; but they are incidental and indirect, rather than proximate like partial mental education.

The fourth great cause of crime in modern times is the concentration of the mass of the people into dense communities, with the consequent impairment or destruction of domestic privacy and family life. Temptations to vice and crime are created by the inordinate display of wealth and luxury, by dishonesty in high places, by criminal contagion,

¹ *The Criminal*, p. 74.

by the association of children and youth of all classes on the streets and in public places, and by unsanitary and immoral conditions. In cities, vice stimulates and nurtures vice ; crime begets and most easily conceals crime.¹ Over 55 per cent. of the convicts in the penitentiaries of Pennsylvania are charged against counties having large cities in them. Philadelphia furnished, in 1890, a convict in penitentiary, jail, or reformatory for every 327 of its inhabitants, while the rural counties of Pennsylvania furnished in that year only one such convict to 2418 of their population ; the city having nearly eight times the rural average. Of the 99,336 arrests made in Massachusetts during 1899, 85,421, or about 86 per cent., were made in its cities.¹ Dr. Drähms says : "Ninety per cent. of the acquired criminalism of the land is thus begotten and reared in, and receives the initial stamp of, the social environment in which it is engendered, and which holds it ever after true to its ideal."²

The fifth cause of the disease of criminality in society is the propagation of defective, depraved, and criminally disposed children by defective, depraved, and criminally diseased parents. There is no law of nature more absolute and invariable than the law of reproduction, that "like produces like." Figs cannot be grown from the seed of thistles, grapes from thorns, or honest moral characters be

¹ *Massachusetts Prison Association Bulletin No. 12.*

² *The Criminal*, p. 284.

engendered by parents diseased with moral depravity. It is not only a natural impossibility for criminals to produce morally sound children, but it is a general law of biology that the lower the position of the animal in the scale of existence, the greater is its capacity and desire for the reproduction of its kind. With mankind the operation of this law tends to a disproportionate multiplication of the imperfect and bad social elements. The continual replenishment of the criminal class is not, however, limited to the reproduction of criminals. An inherited taint of insanity, drunkenness, idiocy, epilepsy, syphilis, tuberculosis, scrofula, and other physical or mental diseases or imperfections is liable to produce moral depravity in the offspring. These are established facts in anthropology, and impose upon society the imperative necessity of prohibiting the marriage of such defective persons.¹ The science of heredity makes it probable that not only the fifty to seventy-five per cent. of criminal moral depravity which has been traced, but nearly every case of it is due to a diseased or disordered organism or function of organs, produced by ancestral influences. Good seed generates sound and healthy fruit, and imperfect parentage can only yield defective offspring. The cycles of crime which notably follow a publication in the newspapers of an especially shocking kind of crime, like the murder of children by a parent, an atrocious sexual crime, a great burglary or daring highway robbery, or a

¹ See Strahan, *Marriage*, and McKim, *Heredity and Human Progress*.

remarkable suicide, voiced in common parlance as an "epidemic of crime," are developments of the latent disease in society under the stimulus of contagious example.

These are the principal genetic causes of crime in the present state of society, and the mere statement of them makes it evident that the progress of humanity and the rapid rate of modern civilization multiply continually the causes of crime, and intensify the action of all the influences which engender the social disease of criminality. If crime has not actually increased in a ratio corresponding to this multiplication and intensification of causes, the counteracting agencies have measurably kept pace with their growth. That there has been no demonstrable decrease of crime or criminality, notwithstanding the unparalleled recent advance in social and criminological science, is an evidence that Penology has fallen behind in the march of progress.

It is also manifest from the foregoing consideration of crime, that while individual cases of the disease can be cured, as cases of other prevalent diseases may be, the plague cannot be eradicated from the social system by confining treatment to developed cases. It is a positive law of Penology: *That the restriction of criminality depends mainly upon prevention of the disease of moral depravity.*

It is impossible to state the number of crimes committed in any civil state during any particular

period, or to compare intelligently the quantity of crime perpetrated during one period with that in another. The number of convicts in confinement at any one time has no reliable relation to the amount of crime committed.¹ It may be assumed that the number of arrests made during a certain period indicates that at least one crime was perpetrated for each arrest. The number of crimes committed for which no arrests are made, in most communities in this country, exceeds the number for which arrests are made. There are many grave and heinous crimes committed, the perpetrators of which, although the crimes are publicly known, escape detection or arrest by their cunning or the stupidity or connivance of the police. A large number of crimes are committed, also, which for various reasons are occult, and the perpetrators of which are not arrested. The estimated number of crimes committed in the United States during 1899 was 978,879; being one for every 22.13 of the population in 1900. Only one, however, of about every twenty-two persons arrested was convicted for felony and placed in confinement.²

¹ "Is Crime Increasing?" Prof. Falkner, *The Forum*, July, 1900.

² See Appendix A.

CHAPTER IV.

THE DETECTION AND IDENTIFICATION OF CRIMINALS.

The Criminal at Liberty the Danger — *Heredity and Human Progress* — All Criminals to be Kept Confined — Scientific Treatment in Prison — Skilful Diagnosis Essential to Cure ; to Future Protection — Identification of Presumptive Criminals — The Bertillon System — Method and Details of — Explanation of its Use — Proof of Accuracy — Indispensable Advantages — National Bureau in America — Importance and Value — Number of Signalments in France, 1899 — A System — Use to Prevent Immigration of Criminals — Census Signalment.

IT is the criminal at large who afflicts the public, rather than the convict in prison. It is against the criminal at large that we lock our safes, bar our doors, pay our watchmen, police our streets, arm our persons, maintain our courts, and provide our prisons. The supreme object of the study of the convict by criminologists has been, and must ever be, to obtain knowledge about him which can be used to protect society from his depredations while he is at liberty, before he is caught. Fifty years ago, when the islands of Martha's Vineyard and Nantucket, off the coast of Massachusetts, were exclusively inhabited by fisher folk and whalers, before steamboats carried excursionists and summer visitors to their salubrious shores, no master of a vessel would land a stranger or suspicious character on them. The men were on the

sea, the women and children were left secure to the protection of the sea. There were no locks on doors or windows, which were only closed against the weather; the jail was without a tenant, the court was only opened once a year as a matter of form, and crime was almost unknown. The growth of population, the progress of civilization, the increase of wealth, the multiplication of modern means of intercommunication with the mainland, the introduction of summer cottages, and the establishment of seaside resorts have in these latter days reduced these Arcadian isles to the defenseless social conditions of ordinary humanity. The safety, peace, and comfort of life which prevailed there fifty years ago might be enjoyed everywhere if we could only eliminate this noxious two per cent. of criminality. It is not to be wondered at that Dr. McKim, in his *Heredity and Human Progress*, so eloquently urges the extermination of criminals by a painless death. Indeed it is a debatable question how much ninety-eight per cent. of humanity ought to suffer from this insignificant minority without revolt.

As public sentiment does not yet support the purely scientific plan of Dr. McKim, practical Penology must be directed toward efforts to secure an adequate defence of society in less drastic even if more expensive ways. If we may not exterminate the criminal class by death, we can nullify its anti-social activities by confinement. The State cannot, with its present knowledge, pronounce positively that any

person is infected with the disease of criminality until it is proved by an actual crime. But when the disease has once manifested itself by the overt act, it is the plain obligation of the State to retain the patient in seclusion until pronounced cured by competent authority. This, in course of time, will equalize the percentage of arrests with that of convicts, either by increasing the number in confinement, or by decreasing the number of crimes, until there are none left at large to commit them. So long as all the diseased are in the hospital or reformatory they will commit no more crime. It is, then, a law of modern Penology, *that every person convicted of crime must be kept in confinement until cured of the disposition to commit crime.*

Repression of crime will be largely accomplished by this continuous confinement of all convicts. When the criminal reaches the prison the work of reformation and cure begins. An examination and study of each case admitted must be made by skilled experts; a course of treatment decided upon, and its administration conducted by trained and intelligent assistants. The recorded results of a very large number of such examinations by distinguished scientific penologists in various countries, of all kinds of criminals, and of many different races of people, warrant the conclusion that most criminals belong pathologically to either the hereditary or the environmental subdivision. As inherited disease is the most difficult to eradicate and least hopeful of cure, and chronic cases almost equally so, each will

require a special and different regimen from those cases which are of a transient nature. There will also be disclosed the widest variations of intelligence, of mental capacity, of moral and physical conditions, of vicious habits and propensities, demanding consideration and modification of the treatment. The expert into whose charge the criminal is committed must, then, be a skilful diagnostician to discover these conditions. He must also be learned and experienced in the application of appropriate remedies to each case. The history of Penology, in the last century especially, has developed specialists of distinction in the science who have displayed great natural genius and ability, and demonstrated by their success and achievements that there are men peculiarly fitted for this work ; of whom Doctors E. C. and F. H. Wines, father and son, Messrs. Brockway, Sanborn, Maj. McClaury, Gen. Brinkerhoff, Mr. Cassidy, and others of our own land, not to speak of those of other lands, are shining examples. In view of these facts it is evidently worse than useless, and indeed penological malpractice of the most serious degree, to place reformatories and prisons, for political or other reasons, in charge of men without the proper qualifications. Medical malpractice is a crime, and so is the practice of surgery without a warrant of proper qualifications. The codes of the future must make it equally a crime for unqualified persons to attempt to discharge the professional duties of caring for and treating criminals. Popular sentiment now revolts with a

just indignation at the idea of committing the insane to the care of any one but a professional alienist, or the sick or injured to any one but a doctor ; it must also be taught to compel the selection of competent and qualified managers of its convicts.

It is a law of our science *that convicts in confinement need, and are entitled to receive from the power which confines them, skilful professional treatment.*

The first examination of the convict by the expert into whose charge he has been committed will be for the purpose of determining the category to which he belongs. The effort of the convict will be to deceive his examiner. This is universally the case. The convict will have had the most experience in deception ; the expert requires superior ability and experience with criminals in order to obtain his objects. If the convict is insane, an expert alienist should detect this in a short interview, and remand the patient to the Asylum for the Insane Criminals. Neither real nor feigned insanity can long be undiscovered by the carefully observing alienist.

If the convict is not of the class of Criminal Madmen, the next inquiry will be whether he belongs to the category of Instinctive or Habitual Criminals ; for these will require as special and peculiar treatment as the first named. The most instructive information on this point will be derived from the previous history of the case ; the circumstances of the crime of which he is convicted, his social condition, parentage, occupation, and youthful environment.

Next in importance is the physical examination for the discovery of any of the well-known stigmata of abnormality,—malformations, asymmetry, tattooing, debility, disease, birth-marks ; as well as scars, height, weight, and various measurements, which should be made by a trained medical expert. Afterwards come the various tests of the mental faculties : intelligence, education, and intellectual activity or sluggishness, and nervous sensitiveness. Finally the scrutiny of the moral consciousness, and the degree of depravity of the moral nature. Conducted with proper care and skill, these investigations will determine whether the patient is to be assigned to one of the above categories, or to be relegated to that of the Single Offender.

If the convict appears to belong to the large category of Single Offenders, a more protracted study of the disease and character will be required than is possible in any short examination. Time and patient watching under continual and rigid tests will be necessary to develop the hidden and obscure nature of the malady which has only once broken out into active virulence ; and to prescribe the remedies which are best adapted to its restraint and cure. Every convict seems to know instinctively that the more perfectly and the longer he can conceal and obscure the chronic and more serious aspects of his disease, the better will be his chance of an early release. Prison discipline, indeed, is largely based upon the principle of shortening the time of sentence in proportion to

good behavior. It is therefore essential to discipline itself that the character of the disease should be correctly diagnosed. But the vital importance of an accurate determination of its nature is to prevent the return of the criminal to social freedom during a simulated or temporary convalescence. A permanent and complete cure of moral depravity is the chief object of confinement. This is very difficult, if not impossible, unless the particular nature of the disease is correctly diagnosed and properly treated. We may consider the principle established in penological science, *that a correct diagnosis of the nature of the particular kind of disease with which each convict is affected is essential to his cure.*

Under the limited time-sentences of existing criminal codes, which involve the release of the convict at the expiration of his sentence, a correct diagnosis of his disease is especially of the utmost importance to the welfare of the society into which he returns. Among the criminal class at large must be sought and found the perpetrators of all crime. A knowledge of those who compose this class, and of the nature of the malady which affects each individual, is the best guide to the detection of the unknown criminal. The kind of crime and the circumstances of its perpetration will always indicate the particular phase of the disease of which it is the symptom, and direct the search to those who are known to be thus affected. A knowledge of the species of depravity which an accused person has previously displayed will also have great weight

in the determination of his guilt or innocence on his trial; and if he is found guilty, should influence the nature of his sentence. It is evident, then, that the supreme function of the Science of Penology is the discovery of the infected members of society before their disease has become an actual offense. To cure the convict and to prevent his repeating crime are the functions which follow the overt act in individual treatment; the first line of defense against crime is laid before crime is committed. If this line can be maintained, society is secure. Upon wise and scientific action concerning the category of "Presumptive Criminals" we must chiefly rely for protection. We may then formulate another law of Penology: *That a positive, accurate, and unmistakable identification of every person infected with the disease of criminality is necessary for the protection of society.*

It is self-evident that the first and most difficult, as well as the most necessary, task, is the detection and identification of those who properly belong to this class of "Presumptive Criminals." As there can be no judicial decision by law without the overt act, we are compelled to rely entirely upon the declarations of science for this. Fortunately, the most valuable results of the study of the criminal by biologists, anthropologists, and criminologists, although this study has hitherto been devoted to the developed disease, have been the discovery of causes and premonitory symptoms. These have been incidentally discovered and defined as positively

Measurements of the head.	{ Length of the head. Width of the head. Length of the right ear. Width of the right ear.
Measurements of the limbs.	{ Length of the left foot. Length of the left middle finger. Length of the left little finger. Length of the left forearm.

These signalments, it is stated in the author's edition of his work in 1893, had been taken on 120,000 subjects who had passed through the prisons of Paris in the preceding ten years. They were copied on cards measuring 146 *mm.* in length and 142 *mm.* in width, and were classified as follows: Women to the number of 20,000 were classed by themselves. From the remaining 100,000 masculine signalments, 10,000 minors under twenty-one years were deducted for a special classification. The 90,000 signalments of masculine adults were otherwise distributed. I will describe the method practised in America, which differs only in detail of measurements from that given in the book. The cards are distributed in a case of three rows of drawers, three wide. The first division is according to head length. There are three primary subdivisions, short, medium, and long; each comprising about 30,000 cards. The medium is in the middle row, and includes all between 187 and 193 *mm.*; which measurement it was found would include about one third of the total. The first, containing those 187 *mm.* long

and all below, is marked A—187; the third contains all 194 *mm.* long, or more. These figures are marked in the first line of the indicating card outside the front of the drawer. Each of these three masses of 30,000 is subdivided into three groups of 10,000 each, according as the width of the head is narrow, medium, or broad.

These are again divided into three smaller groups of about 3300 each, according as the length of the middle finger of the left hand is "Small," "Medium," or "Large." Each of these is separated into three groups of 1100 each, according as the length of the left foot is "Small," "Medium," or "Large." Then come three subdivisions according to the length of the forearm, reducing the number in each to less than 400.

Variations in height divide these last into three, of about 130 signalments; which are again subdivided into three of about 60 each, by variations in the length of the left little finger; which are then reduced to classes of about 12, according to the color of the eye. Thus the collection of 90,000 signalments is divided into groups of 12; from which a similar set of signs can be selected, if it is among the lot, in a moment. The order of classification is that of placing at the beginning those measures which have the greatest signalitic power. A comparison of the numerical signalments on the cards classified in the same final compartment shows that it is well-nigh impossible to find two signalments exactly alike; so that the

Measurements of the head.	{ Length of the head. Width of the head. Length of the right ear. Width of the right ear.
Measurements of the limbs.	{ Length of the left foot. Length of the left middle finger. Length of the left little finger. Length of the left forearm.

These signalments, it is stated in the author's edition of his work in 1893, had been taken on 120,000 subjects who had passed through the prisons of Paris in the preceding ten years. They were copied on cards measuring 146 *mm.* in length and 142 *mm.* in width, and were classified as follows: Women to the number of 20,000 were classed by themselves. From the remaining 100,000 masculine signalments, 10,000 minors under twenty-one years were deducted for a special classification. The 90,000 signalments of masculine adults were otherwise distributed. I will describe the method practised in America, which differs only in detail of measurements from that given in the book. The cards are distributed in a case of three rows of drawers, three wide. The first division is according to head length. There are three primary subdivisions, short, medium, and long; each comprising about 30,000 cards. The medium is in the middle row, and includes all between 187 and 193 *mm.*; which measurement it was found would include about one third of the total. The first, containing those 187 *mm.* long

and all below, is marked A—187; the third contains all 194 *mm.* long, or more. These figures are marked in the first line of the indicating card outside the front of the drawer. Each of these three masses of 30,000 is subdivided into three groups of 10,000 each, according as the width of the head is narrow, medium, or broad.

These are again divided into three smaller groups of about 3300 each, according as the length of the middle finger of the left hand is "Small," "Medium," or "Large." Each of these is separated into three groups of 1100 each, according as the length of the left foot is "Small," "Medium," or "Large." Then come three subdivisions according to the length of the forearm, reducing the number in each to less than 400.

Variations in height divide these last into three, of about 130 signalments; which are again subdivided into three of about 60 each, by variations in the length of the left little finger; which are then reduced to classes of about 12, according to the color of the eye. Thus the collection of 90,000 signalments is divided into groups of 12; from which a similar set of signs can be selected, if it is among the lot, in a moment. The order of classification is that of placing at the beginning those measures which have the greatest signalitic power. A comparison of the numerical signalments on the cards classified in the same final compartment shows that it is well-nigh impossible to find two signalments exactly alike; so that the

agreement of two sets and figures at last constitutes a quasi-certitude of the identity of the two persons described; the one in the case, and the one by whose measures the search has been made.

This quasi-certitude is rendered absolute by the correspondence of the headings of the "Descriptive signalment," and those of the "Signalment by peculiar marks." The immutability of the shape of the ear throughout life, and the great variety of configuration which it presents, render it impossible to discover two ears alike on different persons, — except possibly in the case of twins, — a fact now established by twenty years of experiment, and make it practicable to identify persons whose measurements and description of that organ were taken as early as at ten years of age. The Bertillon system, therefore, is a means of identifying the class of "Presumptive Criminals," as well as the actual. It has been adopted in most of the civilized countries of the world; either officially, or in their principal prisons. It was introduced into the United States by Maj. R. W. McClaury in 1887, and shortly afterwards endorsed by the United States and Canada Wardens' Association, and its adoption urged by the National Prison Association in 1899 and 1900.¹ It is from Major McClaury's edition of Dr. Bertillon's book, entitled *The Bertillon System of Identification*, that this condensed outline has been mostly taken. To this

¹ See *Report of the Hartford Prison Congress*, 1899, p. 244, and that of 1900.

valuable treatise the reader is referred for the full details of its operation.

The great advantages which the Bertillon system affords in the detection and identification of persons accused of crime, as well as in cases of fictitious personification and of mistaken identity ; in the protection of innocent persons charged with crime ; in insuring the conviction of the guilty ; and in distinguishing between new and old offenders, have made it an absolutely necessary adjunct to the scientific administration of criminal law. It is equally useful in detection and arrest ; in trial and conviction ; in the determination of the sentence ; and in the regulation of the treatment of the prisoner in confinement. It is no less valuable as a restraint upon criminality ; for once it is known to the public that however a culprit may disguise himself, or wherever he may flee, his identity can surely be proved, men will be more apprehensive of incurring the penalties of the law. It is apparent that the Bertillon system has direct influence on the criminal class. It has caused the migration of the men of this class to other States in which they can more safely pursue their vocation.¹

Scientific Penology imperatively requires the establishment by the National Government of a central bureau in Washington for the collection of the signalments of all the criminal class in North America ; with legal provisions imposing upon all magistrates and police departments the duty of filing the

¹ *Report of Superintendent of Prisons in New York for 1898*, p. 28.

signalments of all arrested persons, and the privilege of an easy reference to the records.¹ This was also recommended by the National Association of the Chiefs of Police at Atlanta, Ga., May 12, 1896. Arrangements were made at their convention in May, 1900, to accomplish this. Such a national identification bureau should include the signalments of the inmates of all the public penal and charitable institutions; and especially of institutions for juvenile defectives, delinquents, orphans, illegitimate and neglected children, at ten years of age, by the descriptive signalment relating to the ear. The utility of such an institution was notably illustrated by the identification of the anarchist murderer of King Humbert by the Bertillon measurement after all other efforts had failed, and the discovery of his history and connection with a nest of social vipers in New Jersey who can now be watched.

In time, when popular intelligence recognizes the importance and value of such an enrolment, the Census Bureau should include in its enumeration the signalment of every inhabitant of ten years of age or over. When this has been once accomplished the detection and identification of the whole criminal class in the country will be easily effected. The investigations of coroners, the identification of the unknown dead, the prosecution of claims for life insurance, personal permits, passports, the payment of drafts, checks, and money orders, and all documents requiring personal identification would be greatly

¹ See *Report of National Prison Association*, 1896, p. 114.

simplified, facilitated, and protected. It would thus become possible to find any person whenever it might be desirable for his own good or that of others; mysterious disappearances would decrease, crime be greatly suppressed, elections purified, misunderstandings obviated, immigration laws more effectively enforced, much injustice prevented, and business relations greatly facilitated. As the system was extended throughout the world these advantages would increase.¹

The Bertillon method of identification is a system. It is perfect and reliable when used as a complete system, and just in proportion to the completeness of the use of the system is its practical utility and value. To secure the protection it offers, requires first of all a central bureau, and then the co-operation of all the social defensive forces of the country. No adequate defense against crime can be conducted without such a system. The national bureau should be the headquarters of the commander-in-chief of operations against the criminal class, to which reports should come, not only from all parts of the United States, but

¹ Dr. Bertillon reports that the number of descriptions of individuals which had been taken and noted at Paris, up to the 31st of December, 1899, was 198,884. Of these 166,543 were French, and 32,341 were foreigners. There had been noted at the different prisons of France and compiled at the Bureau of Legal Identification from the 1st of January, 1894, to the 31st of December, 1899, 460, 149 descriptions or signalments.

The number of identifications made	{	In Paris.....	12,210
from individual measurements up to		In the provinces and	
31st December, 1899, had been		among foreigners....	1,441

A total of.....13,651

mutual interests would secure them also from neighboring countries, which would derive reciprocal benefits from it. Modern facilities of rapid travel from place to place by railroads, and intercommunication by telegraphs and telephones, have contributed rather more to the successful perpetration of crime and the escape of the criminal than to the protection of society, because the Government has so far failed to properly take advantage of the conveniences of which the criminal avails himself. Crimes are planned in one place, criminals brought from a distance to perpetrate them, and hurried home again before their absence is discovered, while the local detectives are confused by the *alibis* of the local suspects. A central direction of operations which covers the whole field is an absolute necessity of social defense under present conditions.

Another important reason for the establishment of such a bureau is the fact that 56.81 per cent. of our prison population in 1890 was of foreign parentage, although but 32.93 per cent. of our population was of foreign parentage. Half of these prisoners were not naturalized, and one fifth of them unable to speak the English language.¹ This proportion should be larger still by the Twelfth Census, on account of the increased immigration of Italians, Slavs, Magyars, and Russians difficult of identification, unless the very great difficulty of arresting

¹ *Report of Crime, Pauperism, and Benevolence in the United States, 1890*, p. 149.

and convicting criminals among these foreigners interferes with their numerical representation in prison. A perusal of the criminal dockets of courts held in communities where they settle reveals an almost complete monopoly by foreign names. A national bureau of identification could secure from abroad the signalments of foreign criminals, cause all immigrants to be measured, and, if identified as criminals, returned at once whence they came. Thus might be checked the influx of foreign criminals which has so long afflicted our people. One great cause of this influx has doubtless been the adoption of the Bertillon system in the countries from whence they have come, which has compelled them to seek seclusion amid our teeming millions.

It is essential to the protection of our people from foreign criminality, insanity, pauperism, and contagious disease, that all immigrants should be required to bring signalistic passports certifying to their good character and sound physical and mental health, verified by responsible officials at the place of their former residence, and by the nearest foreign representative of our Government. These passports should be tested by the signalments of the central bureau which have been made from the nationality of the immigrant. The value of such an examination of immigrants would far exceed its cost or inconvenience, not only for the restriction of crime, but the protection of citizenship and the rights of suffrage. Our immigration laws should prescribe the return to his native land of every

immigrant who is convicted of crime or becomes a public charge within five years of his landing.

As the direct contest with crime must be waged by the individual States, a co-operative system requires that each State should have its corps commander, through whom communications should be maintained with the national headquarters. This should be a State commissioner of prisons, with power to enforce all laws and regulations concerning convicts, to supervise all penal and reformatory institutions, industrial schools, all protective and detective and penal agencies. It should be the State commissioner's special duty to secure as rapidly as possible the identification and localization of all members of the criminal class in the State, and to transmit their signalments to national headquarters. The national and State commissioners should hold their offices during satisfactory behavior, and provision should be made for their retirement upon pensions when no longer able to discharge the duties of their office.

The establishment of such a system, together with provision for the signalment of every arrested person, would in a very short period secure the complete registry of every member of the criminal class on the continent. The knowledge by every criminally disposed person that he, with his previous history, was positively known to the authorities would not only operate as a very great restraint upon crime, but facilitate the detection and arrest of the perpetrators in the most effective manner

possible. This is the most important tactical advantage of any general system of defense. The great advantages which would naturally follow its adoption would be the co-operation which could be secured between the different States; the information which would be gathered concerning the special measures used in various States, and which could be adopted by all as they proved to be beneficial; the accumulation of scientific knowledge as a foundation for future operations in laboratories of criminology; and the restraint of the raids of criminals from one State upon the people of other States. Thirty-two per cent. of the 77,980 arrests made in all but nine of the cities of Massachusetts in 1898 were of non-residents of the places where they were arrested.¹ A large proportion of the graver crimes are committed by raiders from a distance.

¹ *Massachusetts Prison Association Bulletin No. 12*, p. 11.

CHAPTER V.

CRIMINAL CODES.

Origin of Criminal Codes—Unscientific Development of them—Consequent Futility, Shown by Recidivism—Theory on which they are Founded and of Severe Penalties, False—Theory of Punishment Inutile—Abuse of Legal Privileges—Of Presumption of Innocence—Corruption of Juries—Technicalities Perverted to Delay—Security from Second Jeopardy—Evils of Judicial Discretion—Procurement of Perjury—Irrational Incongruity of Penalties—Murders and Lynchings—The Single Sentence—Criminal Madmen—Instinctive and Habitual Criminals—Single Offenders—The State the Only Legal Administrator of Criminal Laws—Drunkards—Prostitutes—Category of Criminality Disclosed at Trial—The Indeterminate Sentence—The Real Province of Criminal Codes—Necessity for a New Code—Proposed System of Penalties—State Administration of Reformatory and Penal Prisons—The Pardoning Power.

OUR criminal laws have their source in that impulse to retaliate which is derived from the universal and fundamental instinct of self-preservation, and still survives on the parent stock in the human heart. It is as natural to strike back as it is to eat. The *lex talionis* is the first and most ancient of all human laws. Out of this instinctive disposition to retaliate or revenge injury, when communities began to unite for self-protection, grew first the idea of sanctuary, or place of temporary refuge, and next the plan of compensation and retribution. These laws have descended to us modified by the English development of Teutonic

practices and maxims. Society, or the State, having assumed the right to inflict punishment and impose retribution for injury, the individual units lost this right, and it became incumbent on the State to prevent private revenge, and even the exercise of private judgment concerning guilt or innocence.

The original *lex talionis* was the first executed by the community : life for life, eye for eye, tooth for tooth. Then the more humane principles of retribution and compensation began to grow. Next, in the desire to deter from crime, penalties were made as horrible as possible. Inhuman tortures, atrocious executions, imprisonment for life in dungeons, in chains, with bread and water to prolong suffering, were adopted as punishments. Human ingenuity was taxed to invent cruelties. When mankind at last revolted from these atrocities, satisfied of their inutility as deterrents, the attempt began to measure and weigh crimes, and balance them with penalties proportionate to their sinfulness or immorality. Imprisonment and fines were substituted for execution and torture. As a new crime developed in the changed conditions of existence, a new penalty was enacted to meet it. So the criminal codes of States have grown up by additions and accretions, based upon the primitive idea of punishment, made according to the more or less intelligent idea of the legislator of the time. Ex-Governor John W. Griggs, afterwards Attorney-General of the United States, said at the meeting of the American Bar Association in August, 1897,

at Cleveland, Ohio: "An extended experience of personal participation in legislation according to the American system (which we think is the best known) has led me to believe that there is no one thing in all the departments of government or business that is carried on with less scientific or orderly method than the making of laws." This is particularly true of the making of criminal laws. Only one idea has governed their formulation, that of providing a fixed penalty for a stated crime. This idea has prevailed and controlled legislation to the present time, notwithstanding the constant demonstration of its utter inefficiency in the protection of society from crime. The criminal class flourishes undiminished and unterrified, and crime is not repressed by all the modern multiplication of laws, officials, agencies, and prisons. It has become manifest that our criminal codes are a failure. They do not accomplish their object. Statistics prove conclusively that there is no decrease of crime in recent years, if they do not demonstrate a positive increase.¹ The fault must be either in our codes, or in their execution.

That the fault is not chiefly one of remissness in detection and arrest is indicated by the constant re-arrest and reconviction of criminals, and the large proportion of recidivists always temporarily in confinement, estimated to be over 50 per cent. of all convicts²; as well as by the small proportion which the number convicted of crime bears to the

¹ See Drähms, *The Criminal*, pp. 240 *et seq.*

² *Ibid.*, p. 227

number arrested for crime. Of the 72,727 prisoners who were either in the county jails, workhouses, or houses of correction in the State of Pennsylvania September 30, 1897, or were committed to them during the following twelve months, only 8 per cent. were convicted and sentenced.¹ Of the 99,336 persons arrested in Massachusetts during 1898, 29,978 were committed to prisons, and more than 16,000 of these were held for trifling offenses and inability to pay small fines. The remaining 13,978 commitments were but 14 per cent. of the number arrested. In the quarter ending December 31, 1899, the New York City police made 32,264 arrests, of which 2657 were for principal felonies. Of these cases 1612 were disposed of, but there were only 394, or 24.4 per cent. of convictions. The total number of convictions during 1899 in the United States for felonies was only one of every 33.1+ of the total arrests.² Professor Ferri says: "Seventy per cent. of discovered crimes go unpunished."³ The popular belief that but a small percentage of the perpetrators of crime is punished is responsible for much of the criminality in society; for if every one believed that immediate arrest, conviction, and a definite sentence were absolutely certain to follow the commission of crime the laws would be most effectively deterrent. The uncertainty of conviction, and the doubt concerning the measure of the penalty, added to the

¹ *Report Board of Public Charities for 1898*, p. 179.

² See Appendix A.

³ *Criminal Sociology*, p. 223.

expectation of escaping arrest, relieve the fear of the designing criminal, and excite hopes of immunity more powerful than the dread of punishment. The failure of our criminal codes is to be attributed to inherent rather than executive faults, however grave the latter may be. The theory upon which they have been formulated is a theory evolved out of and adapted to savage human relations and not to our higher civilization. The death penalty in its most horrible and repulsive forms was tried in England upon one hundred and sixty kinds of crime, and is now abandoned as useless except for a few of the gravest. It is reported that seventy thousand persons were executed during the single reign of Henry VIII., A.D. 1509-1547.¹ The attempt to exterminate criminals by death proved a horrible failure there, as it has in China, where the death penalty is still relied upon. Lynchings attended with the most savage cruelties have signally failed in the South, in our times, to prevent the crimes which they avenge. Our penal statutes exhibit almost every imaginable vagary in the severity and kind of punishment which has been apportioned to specific crimes. When the punishment was most horrible crime was most prevalent, and life and property least secure, until it became an adage that "crime thrives upon severe penalties." The criminal disposition is by nature oblivious of remote consequences in the pursuit of present gratification. The fear of the law is not before its eyes. It takes

¹ *The Criminal*, Drähms, p. 333.

little thought of to-morrow in the enjoyment of to-day. The whole history of social dealing with crime, from the beginning to the present, proves beyond doubt that the theory of severe penalties for the restriction of crime is false, and as obsolete as the rack or the headsman's axe. Scientific Penology proclaims it as law, *that the fear of punishment does not restrain crime.*

The theory of punishment involves the necessity of awaiting the crime before the law can operate ; which is fatal to every preventive purpose in the codes. Our criminal laws can take cognizance only of the overt act. Without the act there is no crime to punish. This necessary limitation to the discovered culpable deed, the crime which has been committed, completely paralyzes the main purpose of the laws, which is the protection of society from crime. A law which is dead or dormant until the damage is done is better buried than executed. It is a mere legislative locking of the stable door after the horse is stolen. This confinement of the codes to the overt act constitutes a second insuperable cause of their failure.

Because of the terrible punishments imposed upon criminals in early times when life was lightly taken for slight offenses, there sprang up naturally many legal safeguards for innocent accused persons, which have retained their force in the administration of criminal law through all the changes of penalties, and of the practice of courts in trials, until now under modern conditions they tend more

to retard or defeat the ends of justice than to protect the rights of the accused. The attorneys of the prisoner, in their ardor to acquire a reputation for ability and skill in defense, have become accustomed to devote their energies to securing the acquittal of their clients, even when they know them to be guilty. They do this by stretching and magnifying the legal technicalities intended for the protection of the innocent until they subvert much of the protection which the laws might afford to society. Of the persons who are actually brought to trial for crimes, probably the large majority are guilty.¹ But of those tried in our courts a large majority are acquitted. The graver the crime and the heavier the penalty, the more difficult has become the conviction.

One of the most notable instances of this tendency is the strained application made of the "presumption of innocence" in favor of the accused. That every man is to be assumed innocent until proved guilty, is a cardinal principle of Anglo-Saxon common law, a bulwark of free institutions. It is founded on the fact that men in general do not commit crime, just as the presumption of sanity is founded on the fact that men in general are sane. It distinguishes democratic criminal law from that of autocratic or oligarchic States, which assumes the guilt of the accused until he proves his innocence. The latter assumption has always been the great instrument of tyrants for disposing of obnoxious

¹ Thayer on *Evidence at Common Law*, p. 562.

subjects, or for plunder. It permits arrest, indefinite imprisonment without trial, and entire sequestration from counsel or friends ; the horrors and death "incomunecado " of Spain. But when this natural presumption of every man's innocence is urged upon a jury as evidence of the innocence of an accused person which must be overthrown, and great stress is laid upon what constitutes that "reasonable doubt" of guilt which must be entirely removed from the mind before a verdict of guilty can be rendered, it becomes very difficult to convict for serious crimes. This strained interpretation of the presumption of innocence opens a wide door for the escape of any criminal who can influence some of the jury. As accepted by the courts it involves a contradiction, for it presumes the accused innocent while it assumes his guilt and proceeds to overthrow the presumption. The object of trial is to disclose the facts, not to shield the guilty.

The abuse and corruption of the sacred and inestimable privilege of trial by jury by unscrupulous lawyers and politicians has conduced much to the failure of criminal laws. The manipulation of the tale lists put into the wheel for drawing so that there may be drawn on every jury persons who can be easily influenced by fair or foul means in favor of the criminal ; the committal of questions of great importance to the decision of ignorant and incapable jurors ; the growth in cities of a class of professional jurors who secure by political influence their draft into the box in order to obtain the daily

fee ; the use of bribes of various kinds to "hang" a jury in order to prevent conviction ; the frequent granting to the jury of the power to fix the penalty, as well as to determine the guilt or innocence of the accused ; the maudlin and inconsiderate public sympathy often displayed for heinous criminals who have incurred the danger of severe punishment, which overshadows the crime and the damage done to society, and which influences the minds of the trial jury in favor of the accused,—all of these have so discredited jury trials that many persons openly advocate their abandonment. It is the general opinion of lawyers who practise before juries that it is impossible to predict the verdict of a jury from a knowledge of the facts presented ; that the mind of a jury is as uncertain as the weather.

The antiquated and technical practice which rules the conduct of trials enables counsel to delay and prolong them until the public has lost interest in the crime. Witnesses disappear, evidence is lost, and acquittal is secured almost by default. The obstacles to the administration of justice have been increased by recent legislation which has added rights of appeal for a new trial ; of appeal to a higher court on account of technical "errors" by the trial judge ; of stay of execution ; of appeal for pardon ; until the escape of the criminal from the meshes of the law has become more certain than his punishment.¹

¹ "Criminal Jurisprudence," Gen. I. J. Wistar, *Lippincott's Magazine*, June, 1896.

“ Our administration of the criminal law to-day, in a period when the substantive law is merciful, is badly enfeebled by a continuance of some rules and practices which should have disappeared with the cruel laws they were designed to mitigate. I may refer to the refusal of new trials to the government in some classes of cases, to the absurd extreme to which the rule about confessions in evidence is sometimes pressed, to the strained interpretation of the prohibition of *ex post facto* laws and of self-crimination, to the continuation of technicalities of criminal procedure and practice which have lost their reason for existence, and to a superstitious vigor in enforcing these which still shows itself. In following English precedents in such matters, we forget to supplement them by that saving good sense which appears in the swiftness and vigor of English administration. If we follow English practices we should remember that they are all meant to go together ; they may lose their wisdom and good sense when separated.”¹

When the acquittal of a culprit has been once secured by the skill of his counsel, there is thrown about him the cloak of protection afforded by the principle, sound when properly used, that no man shall be twice put in jeopardy for the same offense. He is secure in his freedom, whatever new evidence may be discovered of his guilt. This wise provision for the relief of the innocent is often perverted to the protection of the guilty.

Another serious defect in our criminal codes is the wide discretion which they allow to the trial judge in fixing the sentence of a convict. Judges are subject to the same variations of feeling and judgment as other men. Not only do the opinions of the same judge concerning the amount of the

¹ Thayer on *Evidence at the Common Law*, p. 507.

penalty to be imposed for a crime vary according to his condition of mental and physical health and the impressions made on his mind by the circumstances of the trial, but different judges also in different places and under different circumstances take widely different views concerning the proper penalty for the same crime. Thus it naturally happens that there is a wide difference in the punishment of the same crime in different localities, and in the same locality at different times. The average of sentences for burglary, for example, ranged in 1890 from one year and six months in New Mexico to eight years and six months in Georgia. This leads the criminal lawyer to try to secure for his client a trial before a court which will be likely to inflict the lightest sentence. It deprives the law of that certainty of penalty which chiefly makes it effective in the restraint of crime.

The criminal defense of criminals by the procurement of perjury has become one of the commonest of all crimes. It is the shield which the criminal class depends upon for immunity. Perjury is *prima facie* evidence of criminal depravity of character, and should identify the perjurer immediately as a criminal of the most dangerous class. Society requires the prompt condemnation of the perjurer to indefinite confinement in a reformatory as a primary essential of self-protection.

The horrid experience of the past has, in nearly all the United States, reduced the kinds of punishment administered by law, for all except capital

crimes, to imprisonment and fines; the latter of which are limited by the inability of the convict to pay, and the former by statutory time-limits. The convict has applied to him the number of days, or months, or years of confinement, up to the duration of his life, which the local law prescribes for the crime he has committed. Not only do the legal definitions of crimes and the views of judges differ, but the amount of the fine and the length of confinement imposed for a specific crime vary greatly in different States. Thus the criminal code of one State in 1879¹ provided for the punishment of one hundred and fifty offenses as crimes, only one hundred and eight of which were recognized as crimes by the code of another State. Investigation disclosed the fact that more than half the commitments during the year in the former State, in the latter would have been punished by fines only. The maximum penalty for bigamy ranges in different States from one to twenty-one years' imprisonment. The penalty for perjury in one State is a fine limited between a minimum of \$500 and a maximum of \$2000, in others, five years' imprisonment; in still others, imprisonment for life; and in one, death, if the crime causes the execution of an innocent person. The guilt of perjury in Indiana is to that of incest as twenty-one to five, but in Kentucky it is as five to twenty-one. The penalty for arson varies from imprisonment for from one to ten years to death: in Pennsylvania, Ohio,

¹ *Practical Sociology*, Wright, p. 350.

Nebraska, and Kentucky it is twice that of burglary, but in Connecticut the guilt of burglary is twice that of arson; for grand larceny from two to twenty years' imprisonment; and for forgery from three years' to imprisonment for life, according to location. The guilt of burglary in Kentucky and Alabama is twice that of larceny, but three times in Wisconsin and Mississippi, four times in Georgia and Nevada, five times in New Hampshire, and six times in New Mexico.¹

The Chicago *Tribune* reports 6225 murders, 107 lynchings, and only 131 executions in the United States in 1899. The public took the execution of the criminal out of the hands of the law almost as often as the law was judicially executed. If a criminal is speedily punished for his crime the newspapers are so surprised at the occurrence that they herald the magistrate as a "Railroader." Such incongruities in the infliction of penalties deprive them of much of their efficiency, and the corollary is logically deduced:

That, to be useful, the penalty inflicted upon criminals for each specified crime must be immediate, uniform, and certain.

In the punishment of crime we must of necessity deal with individuals, but we can prescribe a general treatment of criminals in classes, according to the general phases of their malady. Every convict can be assigned to one of the first four categories

¹ See *Eleventh United States Census*, "Crime, Pauperism and Benevolence," p. 378, for full illustration.

into which the whole criminal class has been above divided. If then there is a single sentence applicable to them all, which will secure expiation adequate for the crime of each individual, and will certainly and permanently eliminate him from the active hostile ranks of the criminal class, it will be in accord with the penological laws we have formulated, and provide an effectual remedy for all the faults of our present criminal codes.

All agree that "Criminal Madmen" must be placed in confinement until pronounced cured by competent experts. It is equally manifest that "Instinctive" and "Habitual Criminals," whether the victims of heredity or environment, have no right to freedom until they are pronounced cured by competent experts; and that the safety of society requires their confinement until they are reformed or cured. It is incumbent upon the civil Government to provide suitable hospitals for the confinement and treatment of the criminal insane, under the care of professional alienists authorized to discharge patients, as in other hospitals, when restored to reason.

For the second and third classes,—the "Instinctive" and "Habitual Criminals,"—reformatories managed by professional criminologists are necessary. There criminals may be safely secluded from society and employed in useful labor for their own maintenance, and for the expiation of their offenses to society or to the victim of their crime. When the criminologist in charge shall report to the

sentencing judge the reformation of a convict, a State commission should have discretionary power to order either a conditional or full discharge. The sentence of commitment for him must also be, like that of the madman, continual confinement until a cure is effected. The penitentiaries already built can be utilized, so that no additional expense for institutions for the seclusion of criminals under this plan will be needed. The confinement of these three categories disposes of half of the existing criminal class.

For the remainder, the "Single Offenders," whose offense is the first indication of their malady, reformatories, under the management of the most capable and intelligent professional criminologists, need to be provided, in which they may be confined until their entire character has been sufficiently determined, and, if necessary, so strengthened and reformed as, in the judgment of experts, to allow them freedom without danger to society. Such institutions must have facilities and arrangements for the reformation of the convicts; their instruction in the various occupations of self-support to which they may appear best adapted; their employment in labor for their own maintenance, and the expiation of their crimes. Sentence to the reformatory should have a minimum limit sufficient in the discretion of the committing magistrate for cure and expiation, and be continuous until a conditional discharge for the improved or

reformed, or a transfer of the incorrigible convict to the penitentiary, shall be ordered by a State commission, upon the recommendation of the superintendent or warden. This sentence will minimize as far as possible that destruction of self-respect by the stigma of imprisonment which is one of the chief difficulties in the reformation of the first offender.

Crime is a violation of the law of the State. The execution of the State law devolves of necessity upon the State, and therefore the punishment and treatment of criminals is the province and function of the State only. County jails or prisons under county management are a legal absurdity and abnormality. The abandonment of a convict by the power which has convicted him to the care and keeping of a county official, with no interest in him except the money to be made out of his keeping, is a serious dereliction of duty on the part of the State. It is like the locking up in a police station of a smallpox or cholera patient found on the street. It is an axiom of Penology that county jails are nurseries and hotbeds of crime and criminality. There is an extensive and expensive plant of them in the country, which should be placed under State management, and used for the confinement of unconvicted prisoners and detained witnesses, according to their original purpose. These statements are no mere expressions of opinion, but are demonstrated and accepted as positive facts in American Penology ; therefore :

Penology requires that the punishment and treatment of all convicts must be under the administration of the law-making authority.

There are two very large species of the criminal class which are readily differentiated by the nature of their malady, like the insane. They are the drunkards and the prostitutes. Drunkenness and prostitution are not only crimes in themselves but are also the prolific source and cause of three fourths of the burden of crime borne by society.¹ Although drunkenness is not generally recognized as a crime, of the 978,879 estimated arrests in the United States in 1899, 37.1 per cent., or 364,164, were for that offense.² The successful treatment and reformation of these species require, like the insane, special and separate reformatories, managed by expert specialists, to which offenders should be committed until they are cured, or transferred to the penitentiary for the incorrigible. Experience has absolutely proved that such an indefinite confinement, with suitable treatment, is the most promising remedy for drunkards; and by such a commitment no other stigma than that of the vice is involved.

The necessity for reformatories for prostitutes is twofold: First, the remarkable disproportion of females in confinement (only four per cent. in 1890) is due not so much to a less liability to depravity in the female than in the male sex, "as to a timidity, lack of self-reliance and initiative, and natural love of admiration and consequent fear of the ill

¹ Hale's *Police and Prison Cyclopaedia*, 1893.

² Appendix A.

opinion of others ; together with a certain leniency from gallantry on the part of the sex which executes the law." ¹ Because of the fearful and almost irremediable injury inflicted upon a woman by conviction and imprisonment, she escapes arrest, except for flagrant criminality, when her character cannot be injured. Second, the female tendency to depravity finds a natural vent in disregard of chastity, and in the practice of prostitution. A suitable reformatory would afford an asylum to which prostitutes could be committed for treatment before they reach the incorrigible stage ; and thus provide an efficient means of reformation and repression of this great evil. Hence, *penological science requires the institution of special reformatories, with expert management, for the treatment of common drunkards and prostitutes.*

The evidence in the trial of an accused person will, in most cases, show clearly the class to which he is to be assigned, when convicted. When it does not, the sentencing magistrate can commit him to the reformatory, where a scientific and prolonged examination of the case can be made, and a just decision reached. When the arrest and conviction of all the criminal class has disposed of it in this manner, society will be entirely relieved of the burden, and largely of the fear of it. At the same time the propagation and natural increase of it by generation will be stopped.

¹ Hon. Philip B. Garrett, National Conference Charities and Correction, 1897.

It is manifest that what is termed the "Indeterminate Sentence" conforms to all these conditions, satisfies all the requirements, and effectually solves the problem. It is the only single sentence which can be applied to all cases with justice. By it the judge commits a convict to a reformatory just as a doctor commits a sick, injured, or insane person to a suitable hospital until cured, and for the same reasons. *The science of Penology has demonstrated positively that crime is the unmistakable symptom and evidence of a disease ; dangerous, persistent, contagious, and endemic.* It is as absurd to commit a person in whom this symptom has been detected to prison for ten or thirty days, six months, or a definite number of years, as for a doctor to commit an insane or other patient to the hospital for the same limited terms.

The province of criminal law is not alone to punish criminals, nor is this its most important object, though this is the only ostensible purpose of the existing codes. Its primary duty is to restrain in confinement all detected criminals so long as they menace society ; to catch and confine as quickly and completely as possible the entire criminal class found in its midst. It must provide and secure an intelligent, scientific treatment of its prisoners calculated to effect their cure, reformation, and adaptation to an honest social existence when they are liberated, together with the identification and continued seclusion of the incorrigible. But it is not enough to eliminate the arrested alone from the

hostile ranks. The purview of the law must include the source of the stream of crime which overflows without ceasing the fields of social prosperity and comfort. Wise criminal sanitation, hygienics, and inhibition are decidedly more efficient as preventives than all the deterrence to be hoped for from penalties. Indeed the easiest, most economical, and fruitful efforts which society can make for the restriction of criminality are those which can be applied at its incipient springs. The criminal code must now pass beyond the limit of the overt act, and reach down to include in its care all the dangerous elements,—the offspring of criminals, the uncared-for children who are constantly recruiting the criminal class,—and effectually stop by its prohibitions and the seclusion of the diseased the propagation of depraved offspring. Scientific Penology demands even more than this, that society shall educate and cultivate the moral natures of all its children equally with their mental and physical functions, and insure a normal, all-around, healthy development of the rising generation, fortified and harmoniously strengthened in these three elements of character to resist the virus of moral depravity, the germs of criminality.

The faults of our present criminal codes are so grave that no correction of them is possible by any patchwork legislation. The incontrovertible conclusion of scientific Penology is that the whole confused and diverse specification of penalties for crime should be expunged from the statute books,

and a new, plain, and simple code enacted ; founded on the moral status of the criminal, and not on the crime alone. The overt act must be recognized simply as the unmistakable symptom of a diseased condition, for which the perpetrator is to some extent responsible, to be sure, but which it is the duty of the State to cure for the protection of society.

The death penalty for wilful murder has been proved to be useless for protection, and should be abolished. Life imprisonment without hope of pardon will best secure the protection of society. This subject, however, will receive special treatment in the following chapter.

For sexual crimes, nature offers an effective penalty and cure in castration. This penalty would act as the most powerful deterrent if it was certain and quickly imposed. It is a good, sufficient, and natural punishment, and prevents the repetition of the crime. For all other crimes, penal fines and terms of punitive imprisonment in a reformatory should be imposed, the fine to be liquidated by labor or cash payment, and the confinement to be continued until, under the operation of the discipline of the reformatory, the convict is cured of his disease, or permanently secluded in a penitentiary. The indeterminate sentence is the logical deduction and discovery, the sufficient and crowning fruition of twentieth-century Penology. It has been partially adopted in several of our States, where the results have been so satisfactory that we may state it as a settled principle :

That all sentences of confinement must have only a minimum limit for retribution, and be continuous thereafter until the convict is declared cured by competent authority.

Every State should have a prison inspector, or commissioner, who should have power over the administration of all penal and reformatory institutions sufficient to enforce the laws and protect both the interests of the State and the rights of the prisoner. As experience and knowledge will add to his ability and usefulness, the term of his office should be during good behavior. The State prison inspector, the superintendent or warden of the institution where a prisoner is confined, and the judge of the court by which he was committed should be constituted a court with full power to order the discharge of a prisoner when he has given sufficient evidence of his cure and fitness for social life, and to transfer the incurable and incorrigible to the penitentiary for permanent seclusion. Such a court should be the court of last appeal for all convicts.

This system of dealing with criminals involves the repeal of nearly all powers of pardon conferred upon executive officers and boards of pardon: these powers, necessary under vindictive penal statutes, are always liable to be greatly abused through political influence. The hope of pardon is never abandoned by the criminal during a long sentence, nor does he ever cease his importunities and effort to secure an alleviation of its

severity, or escape from its execution. This hope is a confident expectation before the crime is committed, and counterbalances much of the deterrence of the legal penalty. The granting of pardon as an act of clemency works great public injury under our present laws, and to a large extent defeats their object. It should be restricted to cases when new and positive evidence of innocence is discovered after sentence. After a learned judge and honest jury have carefully tried a prisoner, it is absurd to allow any officer of the Government to rehear and reverse the decision. Such a power invites improper influences and suggests wrong motives. It is therefore an additional advantage in a scientific system of criminal legislation that it relieves both society and its executive officers from the responsibility and annoyance of exercising the pardoning power. The whole responsibility of release is transferred to the convict, where it belongs.

CHAPTER VI.

THE DEFENSE OF SOCIETY, AND STATE CONTROL OF CRIMINALS.

Recidivists the Main Body of the Hostile Force—The Most Dangerous—Proportion of, among Convicts—Must be Cured before Discharge—Benefits of their Confinement—Necessity of Uniformity in the Criminal Codes of all States—Single and Juvenile Offenders—The Presumptive Category—Obligation of the State to Execute its Own Laws—County Jails a Relic of Early Conditions—Their Present Disadvantages—State Care a Duty to the Criminal—Economy of State Care.

WE have explained, in what has preceded, some of the principal elements and conditions of the problem which the protection of society from the depredations of criminality presents, as elucidated under the light of the highest intelligence of our times. We shall now proceed to examine and define the strategic principles upon which a successful defense of society against crime must be conducted, and some of the more obvious tactical measures which are logically suggested by our present science.

In this, as in every contest, the main object must be to overcome and subdue the hostile forces. These forces, as we have shown, are not solely the detected and arrested criminals who have made their attack, inflicted their damage, and been

captured, but the main body of the criminal class at large in our midst, ten times the number of this captured skirmish-line, which is lying constantly in wait, ready to spring upon any unprotected point, whose sharpshooters disturb the public peace, harass our best-guarded strongholds, and keep society in perpetual alarm. The subjection and control of this force is the only complete defense against crime. There is no defense in the conviction and confinement of one who has already perpetrated his crime, except so long as imprisonment prevents his perpetrating another. The prisoner must therefore never be allowed to return to society as a reinforcement to the criminal class. He must be held in hospital until his disease is cured, his reformation complete, and he is able and willing to take an oath of allegiance to the powers of order and honesty.

About half of the convicts confined in our penal institutions, as in those of other countries, by a moderate estimate, are recidivists.¹ A recidivist is an anomaly, an absurdity of national penal legislation. He is not only a social pest, but a reproach upon social intelligence. There is no reason for his existence, except the stupidity or indifference of the legislator. The recidivists are the professional class of criminal experts from which society suffers its greatest damage, which excite its greatest fears when at large, and cost it most for protection, arrest, conviction, and maintenance in prison. The

¹ See *The Criminal*, Drähms, p. 227.

875 convicts committed to the penitentiaries of Pennsylvania in 1898, represented 1808 convictions or commitments.¹ Mr. Brockway estimates the number of recidivists in New York prisons at sixty per cent. of the inmates.² Morrison, in *Juvenile Offenders*, estimates the old offenders to be seventy per cent. of the convict population.³ Dr. McKim, in *Heredity and Human Progress*, cites the case of one criminal who had been arrested no less than one thousand times.⁴ It is not an infrequent occurrence to find convicts with a record of fifty convictions. Against the class of recidivists undoubtedly may be properly charged at least two thirds of the crimes committed and of the cost of criminality in America, which according to the estimate made in Chapter I. is an annual cost of some \$600,000,000 to society.

Moreover, this criminal-expert class is the parent and educator, the inspiration and example, of youthful criminality; the unfailing source and spring of the reinforcements which baffle and defeat all the efforts made to bring the contest with crime to a victorious conclusion. There can be no question or doubt, then, that the first direct object of penal legislation must be the elimination and extinction of the recidivistic class of criminals. Protection is impossible while the repetition of crime is possible. To discharge an uncured criminal into society, after his disease has been discovered, is not

¹ *Report Board of Public Charities, 1898*, p. 154.

² See *The Criminal*, Drähms, p. 227.

³ See p. 236.

⁴ See p. 180.

the penalties imposed upon crimes, and their administration the least effective. Uniformity of the criminal codes of the different States, therefore, becomes an important factor of social defense. It is a strategic principle that the lines of defense shall have no weak points, but be equally invulnerable everywhere. The existing diversity of criminal codes in the United States not only introduces the element of uncertainty of punishment, and acts as an incitement to criminality in general, but unduly increases the social damage and cost in those communities which practise the greatest leniency toward criminals. The defense of society by law depends chiefly for its efficiency upon the certainty of punishment of crime. The co-operation of the proposed State commissioners, and their supervision at national headquarters, would conduce toward promoting such uniformity of codes and penalties in the several States as would assure a fixed and definite sentence for every crime, wherever it might be committed. It would hasten such a revision of all codes, and such a change of base from vindictive punishment to reformation of character, as science requires.

The lines of defense against the two remaining categories, the "Single Offenders" and "Presumptive Criminals," are more extensive, attenuated, and difficult. "Single Offenders" will be found both among adults and juveniles. The adults are guilty of the more heinous crimes but are fewer in numbers; the juveniles are more numerous but are

generally petty malefactors. The single crime must, however, be interpreted as the first development of the disease into an acute condition, which calls for instant remedial treatment. The adults must be indefinitely consigned to a punitive confinement in a reformatory. But no such general rule can be laid down for the juvenile malefactor; his disease may be assumed to be in its incipient and tractable stage. Confinement with older criminals will be more likely to promote its development than to effect its cure, even in the reformatory. Unless there are unmistakable evidences of pronounced criminality, or the crime is one of serious gravity, it will be preferable to commit the juvenile offender to a suitable industrial training school, or to liberate him after admonition under the surveillance of a probation officer. The imprisonment of a juvenile first offender is usually a much graver social crime than that of which he is accused. He should be regarded rather as a "Presumptive" than as an actual criminal. The signalments of both juveniles and adults, however, should be put into the records, where they will remain forever hidden, unless brought forth by some future crime.

Having in this way effected the protection of society from the categories of innate criminality, there remains only the "Presumptive" category to be guarded against. A defense must be attained from the attacks of recruits or reinforcements of the criminal class from the rising generations as they progressively reach the age of hostile ma-

turity. To accomplish this it will be necessary that the State extend its supervision and control over all the children of its citizens, and enforce their proper and rational nurture and education. The defective, depraved, and incorrigible must be identified in childhood and placed under special care and training, and their surveillance by officials secured, with a view to restore normal conditions of health. Illegitimate orphans, deserted and neglected children, must be placed under State care, and a system of scientific culture instituted, calculated to eradicate the germs and inherited tendencies to moral depravity. Institutions will have to be provided where suitable classifications and subdivisions can be made, and the State, can supply family instruction and nurture, to remedy so far as possible the failures of natural parentage. Industrial schools for instruction in trades and useful occupations must be maintained for the older children so that all shall be assured an ability to earn an honest living, according to their stations in society. The signalments of the incorrigible or suspected inmates of all public institutions should be placed in the national records. They will supply very useful information for the detection of future criminals and for their treatment after arrest.

Such a system as has been described seems to be the only practicable defense of society against the attacks of crime and the disease of criminality. If executed with diligence and intelligence, it promises the most economical and humane solution of the

problem. It comprehends the whole criminal class in its scope. It removes it entirely from the sphere of hostilities, and prevents the repetition of crime by all its elements. It is plain that this plan cannot be successfully executed unless the entire control of all convicts within its boundaries is exercised by the State. Indeed there can be no rational, successful, or hopeful defense of society on any plan or system without this.

The State enacts the laws and must of necessity enforce them, or they are vain and empty edicts. The moment a criminal is convicted under State laws he passes of necessity under the control of the State authorities. The State has no right or rationally justifiable power to depute the execution of its sentence to an independent, irresponsible agent. It cannot reasonably be relieved of the responsibility and duty of executing the sentence which it imposes. The power of executing its own laws inheres naturally and solely in the law-making power. Because crime is a violation of the laws of the State, and the State imposes the sentence, the State must complete its duty by attending to its proper execution.

Much of the inefficiency of our criminal codes is due to the improper delegation of the execution of the State laws to county officials; and to the confinement of convicts in county jails, managed by sheriffs elected for short terms, whose chief interest is in the profits to be gained from the office, and not in the reduction of crime in the community.

The county system of dealing with crime has become a byword and reproach in America, condemned for years by all penologists ; but county officials, actuated by short-sighted selfishness, have been so far politically powerful enough to prevent its overthrow.

“The county prison is a relic of a condition of affairs which existed when the States were young and the criminal population small—conditions long outgrown ; but the system established in the early days survives its usefulness. A half a century ago the jails were used almost exclusively for persons waiting trial and poor debtors ; now nearly nine tenths of the inmates are serving sentences, and only the balance awaiting trial. Formerly it was difficult to get from one county to another : judges even rode their circuits on horseback. The safe transportation of criminals was impossible. In those times the criminal was a local product who was necessarily tried and maintained during sentence in the locality of his conviction. Then the sheriff and his deputies were the principal officers for the detection of criminals and the enforcement of the criminal laws. These conditions no longer exist. The county and municipal prison are both wholly out of adjustment with any rational system of administering criminal law, and should no longer be used for the confinement of convicts. Only about half the prisoners in confinement at the time of the census of 1890 were in State penitentiaries. The 40,000 or more in other institutions were under various systems of discipline and management. There was and can be no uniformity of treatment. Some are severe, others lenient. In some jails the diet is poor, in others superabundant.¹ In some there is employment, and in others idleness. Some are avoided by those who live in institutions : others are sought as desirable winter quarters. They are all under political influence, and managed for selfish political purposes,

¹ The author knows one jail where the convicts ate at the sheriff's table.

to such an extent even that the convict with political influence secures unwarranted privileges.¹ Discipline and economical management are impossible, even with honest and well-intentioned officers.

“The expense of prison management should be borne by all the people ; for every citizen is interested in the proper and economical management of the criminal class all over the State, and not alone in his own county. Caring for criminals is a duty of neither a county nor a city, and neither should be compelled to expend money for that purpose. Nothing can be accomplished in county prisons in the way of reformation of the inmates, who return time after time until death. One half of all the prisoners who came into the county prisons of Massachusetts in 1897 had been in the same institution before, and thirty-six per cent. of this half had served five to fifty sentences each. The habitual misdemeanant is found everywhere, and will be found until the State assumes the management, classifies all its prisoners, and adapts its treatment of them to their real needs, with a view to their reformation or permanent incarceration.”²

It is not only as a duty to itself and to society that the State should control all convicts. It is also a duty which the State owes the convict. The State has declared him diseased, and it is as great a crime for the State to thrust him into prison without providing competent professional care and treatment as to confine any other sick person picked up on the street in prison without the attention of a doctor. Civilized society revolts at such a proposition. The right of a criminal to skilful and

¹ The author knows of a sheriff who was accustomed to take convicts to horse-races in another county.

² Condensed from address of W. F. Spaulding, National Prison Association, 1898, p. 218.

competent treatment from the power which deprives him of his freedom and ability to obtain this himself, is as inalienable and undeniable as that of a victim of sunstroke, accident, or suddenly developed disease who falls into the care of the police. The State is morally liable for wilful neglect to provide proper care in such cases, and it is probable that the time will come when the law will guarantee such rights to the criminal.

It has been already proposed that the State, or authority responsible for the public safety, should be made pecuniarily responsible for neglect to protect individuals from crime; and a criminal may demand protection from undue cruelties, preservation of health, and religious privileges, in his confinement. Now that criminality is recognized as a curable disease, he may justly claim that the State, when it locks him up, shall make the best and most skilful provision for his cure, for his own sake, and as his personal right, as well as for the good of that society which obtains protection by the deprivation of his liberty. Such provision is never made, and, from the natural conditions existing, cannot be made, in county prisons. It is a law of this science *that the State must provide competent, skilled penologists to superintend the treatment of all convicts.*

It is, moreover, a settled maxim of sociology now, that convicts in confinement should be made to defray the public costs of their confinement by productive work, in order that honest laborers may

not be compelled to suffer the unnecessary expense of maintaining them, in addition to the inevitable cost of their crime. It is impossible to secure this relief for society, to any great extent, unless all convicts are controlled by the State, and in institutions adapted to the purpose. It can be accomplished in State institutions, and is in some, notably in the State of New York to a considerable extent, since recent legislation provided suitable employment for its prisoners. It never is and cannot be done in county jails. Such is the system which penological diagnosis now infers and offers for the defense of society in place of the obsolete and ineffective measures which have grown up out of the tentative experiments of the past. It involves not only State watchfulness to prevent insidious percolation through the levees raised against the flood and pressure of crime from destroying them, but such control of the headwaters as will protect them from ruin by overflow.

SECTION II.
THERAPEUTICS.

SECTION II.

THERAPEUTICS.

CHAPTER VII.

LEGAL PENALTIES.

Punishment the Natural Reaction of Violated Law—A Necessary Sequence of Crime—Justice Impossible in Legal Penalties—Penalties Deterrent with Majority—Function of Legal Penalties—Effective According to Restraint and Deterrence—Now Generally Reduced to Fines and Imprisonment—The Death Penalty—Homicides and Executions in the United States—Capital Punishment Most Effective Restraint and Deterrent—Murderers Incapable of Restraint—Capital Punishment no Longer Enacts Public Opinion—Castration for Sexual Crimes—Imprisonment for Felonies—Continuous until Criminality is Cured—Hopefulness of Reformation—Reformatories and Indeterminate Sentence for “Madmen,” “Instinctive,” and “Habitual Criminals”—First Offenders not to be Imprisoned—Indemnity—How to be Exacted—Simplification of Punishments by Science.

THE failure of violent extremes of punishment to reduce the plague of criminality has been indicated in the section on diagnostics. We may not, however, conclude from such failures that the function of punishment should be omitted from criminal law. All laws of God and nature are enforced by the penalties which inevitably follow their violation. Violations of the laws of health cause sickness and personal suffering; violations of the

laws of physical nature result in disaster ; violations of the laws of God, which govern the relation of man to Him, or to his fellows, the laws of religious reverence, of truth, of honesty, of virtue, of morality, produce depravity of character, incapacity for happiness in this life, and an instinctive expectation of misery in the next ; whether reason rests on the revelations of the Word of God or not. The main incident which has survived the obliterations of time out of the history of the long and doubtless thrilling lives of our first parents and their first-born son is the single transgression of each, and its punishment. The book of Job, supposed by scholars to have been written some 3500 years ago, and to be the oldest literary production in the world, says, " Even as I have seen, they that plow iniquity, and sow wickedness, reap the same " (iv., 8). St. Paul wrote in his day, " for whatsoever a man soweth, that shall he also reap " (Gal. vi., 7). " Crime and punishment grow out of one stem. Punishment is a fruit that, unsuspected, ripens within the flower of the pleasure which concealed it. Cause and effect, means and ends, seed and fruit, cannot be severed ; for the effect already blooms in the cause, the end pre-exists in the means, the fruit in the seed." ¹ History, observation, and the natural sense of fitness and justice make punishment the inevitable retributive reaction of crime. The immutable law of the conservation of energy, that action and reaction are of necessity equal,

¹ Ralph Waldo Emerson, *Essays*, vol. i., p. 100.

fixes the degree of the punishment which necessarily follows crime.

The belief that equivalent compensation must of necessity be made sooner or later for sin, vice, and crime is, and always has been, well-nigh universal and instinctive. It is a recognized law of human life, as inexorable as that fire will burn or water drown, that punishment is the sequence of violated law. The parent punishes the child, the teacher the pupil, the master the servant, the employer the employee, trade-unions their members, the church those under its jurisdiction, the military and naval officers their subordinates, all in authority those subject to them, by virtue of, and to the extent of their ability to control and compel. So long as they do not transcend these limits no one can withstand their right, or resist their will in punishment. It is a natural right and supreme power; the only way of maintaining the supremacy of law. When the State began to make laws, therefore, it devolved upon it to enforce them by penalties. After the analogy and example of the Creator, and of nature, it assumed the right of inflicting penalties for the violation of its laws. The right is sustained by the Divine example, by human experience and reason, and by the authority of the State, or the will of society. Our science proclaims it to be a positive deduction from scientific premises, *that punishment is a necessary sequence of crime, an essential element of criminal law, an inherent attribute of the law-making power.*

The abstract idea of justice must have originated in the observation of the penal consequences of the violation of natural laws. The righteous disposition to follow the example of the Creator in the enactment of human laws led to the effort to counterbalance crimes with proportionate penalties. The infliction of these penalties came to be called the administration of justice; and the reparation by the penalty was accepted as a just reparation and satisfaction for the crime. "Even-handed justice" was supposed to be done by the legal expiation. This supposition is now known to be incorrect. It is seen that the rational demands of justice are rarely satisfied by the legal penalties of crimes, and indeed cannot be satisfied by any penalty which has been exactly fixed beforehand for any crime. The principle of justice is in harmony with the law of science, *that the punishment must be fitted to the criminal, rather than to the crime*. Justice can only be satisfied by adequate reparation by the individual criminal, and it is not always possible for him to make adequate reparation. How, for example, could justice be satisfied by any punishment which might have been inflicted upon the assassin of the great and noble Lincoln? Or what possible reparation by suffering could a human brute be made to render which would satisfy the claims of justice for the crime of rape, and the communication of a loathsome, incurable disease to a pure, beautiful, and cultivated maiden? The observed effects of wrong-doing,

vice, and crime upon the perpetrator may have engendered the idea of human justice, but no penalties imposed by man can be made to satisfy its demands, nor can they be rationally accepted as the full expiation for crime, as Kant argues. The penalties which are the sequences of crime are just and right as far as they go, but it is impossible to escape the conviction that in many cases the immutable principle of justice demands and will exact more than can be rendered in this life. This impossibility of counterbalancing exactly any crime by a sufficient penalty proves also the fallacy of Fichte's "Social Contract" theory of punishment. *The element of full expiation is now excluded from the punishment imposed by human law, which is restricted to protecting society.*

As the penalties which follow the laws of God and the laws of nature are such as secure their observance by most intelligent creatures, so the penalties imposed by human laws should be calculated to enforce obedience by all who are in general governed by rational motives. To this extent legal punishment is a deterrent from crime and possesses a utilitarian value. For a very large portion of humanity is undoubtedly restrained from violation of law by the fear and dread of the disgrace and punishment which is the threatened penalty of transgression. Many refrain from sin, vice, and crime from what are called conscientious motives, because they know that their own highest happiness will be attained by living in harmony

with the laws of God, nature, and society. They live righteously for the sake of righteousness ; others observe the law for fear of its penalties. The small criminal class defy and violate religious, ethical, and social laws because the fear of punishment is less powerful with them than the motives to criminality. They are not controlled by the influences and reasons which govern the actions of the majority of mankind. But the presence in society of a class which is not rendered immune by the ordinary and approved means of moral sanitation is by no means an argument for the abandonment of these means, as has been urged by some. Punishment cannot be abandoned as the main deterrent agency of the law because some persist in criminality in defiance of punishment. No laws, either of God, nature, or man, are universally obeyed. It is to be expected that only the great sane and sound majority of mankind will obey and observe law and respond to rational motives. The abnormal and obdurate class demands of science special additional treatment. The response to this demand is *reformation, the cure of the abnormal and diseased condition which prevents obedience to law.*

If the character of the criminal is so different that it refuses to respond to the influences which are sufficient for the restraint of the masses, it is obvious that the interest and duty of society is to cure its defects and restore it to its normal condition of submission to the laws that govern society

in general. We protect our water-supply from pollution as effectively as possible, but do not neglect the victim of typhoid because preventive efforts failed in his case. Experience has demonstrated the practicability of reforming the character quite as positively as it has been inculcated by the teachings of religion and morals, and as conclusively as it has shown the impossibility of adjusting penalties to the infinite varieties of character and crime. The office and function of legal penalties is to stop the commission of crime by the arrested criminal, and to promote obedience to the law by all others. Its chief purpose is not to inflict a measure of suffering upon the criminal exactly equal to the wrong done by his crime to society or to an individual ; to exact a just compensation for his crime ; to satisfy the demands of justice ; to wreak a proper vengeance ; or to frighten others by its horrors from the commission of similar crimes, all of which experience has proven impossible. It is to display the determination and ability of society to enforce and execute its laws, to condemn as hostile to the public welfare those who violate them, and to protect its members in the enjoyment of all their rights and privileges. When this is secured as a general result it has attained practical success.

The main value of legal punishment, therefore, is economic, in its restraint of the majority of men from crime. Its actual benefit to society is proportionate to the number who avoid it, rather than

to that of those who suffer it, somewhat as its individual benefit depends more upon its certainty than its severity. Reduced to a function of deterrence, it follows logically that legal penalties should be made as repugnant and obnoxious as possible to those expected to be influenced by them,—to mankind in general. The criminal class of morally depraved may be omitted from consideration in this connection entirely, since it is to be dealt with on other principles. As good citizens value their character and reputation above all else, conviction and punishment for crime should make as certain and distinct a demarkation between good citizenship and criminality as the law can effect. The law must make crime odious and despicable; and the criminal be treated as an anti-social, depraved, and dangerously diseased element in society. Identification with the criminal class should be made the most dreaded but inevitable penalty of crime, a sensible disgrace for all ranks and classes. *Legal penalties are deterrent in proportion to the popular estimate of the disgrace which pertains to them.*

Reduced to these two functions,—restraint of the criminal, and deterrence of others from crime,—the problem of legal punishment or penalties is greatly simplified, and brought into harmony with the humane sentiments of modern Christian civilization. After experimenting with almost every conceivable kind of cruelty in death penalties and tortures, a full and thrilling narration of which is to be found in Dr. F. H. Wines' *Punishment and Reformation*,

Government now generally confines its legal penalties to fines and imprisonment, except in the case of premeditated murder, for which in most countries the death penalty is still retained.

The advantages which have followed the abandonment of severe and cruel penalties, and of futile attempts to satisfy the demands of justice by human law, have raised a question whether the Government ought to put even murderers to death. The death penalty has been entirely abolished in the States of Colorado, Maine, Michigan, Rhode Island, and Wisconsin; and in seventeen other States life imprisonment may be substituted for it. It has been abolished also in the Argentine Republic, Belgium, Brazil, Chili, Costa Rica, Guatemala, Holland, Italy, Norway, Portugal, Russia; in eight cantons of Switzerland, and Venezuela. Its abolition in these States and countries is, however, too recent to supply any reliable data for scientific conclusions concerning the effect of the change upon the crime. There have been apparently slight decreases in the per capita number of murders in some countries, and increases in others,—Italy for one.¹ But these variations may have resulted from other causes.

Dr. F. H. Wines reports in his *Bulletin on Pauperism and Crime* of the Eleventh United States Census that

“the ratio of prisoners charged with homicide in Rhode Island, where the death penalty has been abolished, is lower

¹ *The Criminal*. Drähms.

than in other States in the North Atlantic Division, except in Massachusetts. The number of executions in 1889, as reported by the sheriffs, was relatively largest in the Western Division, where it was 1 in 178,095 of the population. Yet in this division the ratio of prisoners charged with homicide was also greatest. The next largest ratio of executions to the population was in the South Atlantic (1 in 205,998) and in the South Central (1 in 215,155) divisions. Yet these are the divisions in which is also found the next largest ratio of prisoners charged with homicide. The number of executions and lynchings reported by the sheriffs in the Southern States is identically the same."

The number of homicides gathered from newspapers and reported by the *Chicago Tribune*, and the number of executions and lynchings, was for the specified years as follows :

HOMICIDES.

1882—1467=1 to 34,189 of population.
1890—4290=1 to 14,597 of population.
1899—6225=about 1 to 12,000 of population.

EXECUTIONS.

1882—121=8.25 per cent. of murders.
1890—102=2.37 per cent. of murders.
1899—131=2.1 per cent. of murders.

LYNCHINGS.

1882—117=8 per cent. of murders.
1890—126=2.93 per cent. of murders.
1899—107=1.71 per cent. of murders.

These figures are approximately correct, and are the most complete that can be obtained for this country.¹ They show an alarming increase of

¹ See Appendix C for full table of eighteen years.

homicides, accompanied by a proportionate decrease of executions by law and lynching. But the immigration of the lawless from other countries, the liberation of slaves, the settlement of new localities, and other peculiar and temporary influences have had a great effect upon the increase of homicide ; while the growth of popular sentiment against capital punishment has so largely prevented the conviction and execution of murderers as to almost nullify the deterrent powers of the law.

We are therefore compelled to rely upon the demonstrations of reason rather than actual experience for a decision of the question whether murderers should be executed. Applying the test of restraint and deterrence as a measure of the utility of the death penalty as compared with life imprisonment, the former would seem to be decidedly the more effective. It certainly terminates the career of the criminal and prevents any repetition of crime on his part. If the life of the murderer is extinguished quietly and without parade or public notice by the newspapers, just as one crushes the head of a snake, or shoots a mad dog to rid society of a danger, the death penalty will certainly be more deterrent to the criminal class than any other. The sentence of life imprisonment always carries a hope of escape or pardon. So far as the deterrent effect of either penalty in the prevention of murders is concerned, there is no good reason for believing that this crime can

be much restricted by any legal penalty. Murder is incited by passions and circumstances which override all restraints. The murderer has no fear of the law of God or man before his eyes, nor does he consider beforehand the consequences of his act. Whatever protection society can obtain must be secured by the universal prevalence of a conviction in the minds of men that the crime of destroying the life of a human being is so heinous, monstrous, and irreparable, that every one will be vitally interested in immediately depriving the perpetrator of the power of repeating it.

Human law is the legal enactment of public opinion. Life is the one sacred, essential, invaluable possession of man. Once taken it can never be restored. No mistakes of judges, or witnesses, or lawyers, or juries, can ever be rectified after the convict is executed; and it is known that innocent men have been not infrequently executed. Public sentiment, therefore, revolts against the condemnation of a fellow creature to death, even for murder. It is reluctant to take away that which it can never restore; to kill a man in order to impress society with the sacredness of life. This is why murderers are allowed to escape the death penalty, and why the laws fail to restrict murders. The death penalty is no longer an enactment of public opinion. It is a fictitious law, which, by the constant refusal of the public to enforce it, rather encourages murder by stimulating a hope of escape in the mind of the criminal, instead of deterring from action. It has

become in fact as obsolete and ineffectual for murder as it has for minor crimes. The protection of society imperatively demands, therefore, the immediate repeal of the death sentence, and the substitution of life imprisonment, with the pardoning power carefully and narrowly restricted, so that its exercise may be hoped for only when innocence is positively discovered, or for extenuating circumstances, or for supreme reasons of life and death urgency. Such a law will be in itself an impressive evidence of the social estimate of the sanctity of human life. The total abolition of the death penalty has been urged by many of the ablest statesmen, jurists, and philanthropists for the last century; penological science now confirms their judgment.

For the crimes of rape, incest, sexual intercourse with the imbecile, insane, drunken, or drugged, and sodomy, nature offers the most effective means of restraint and deterrence by the castration of the convict. Science prescribes this as a positive preventative of repetition, and of the propagation of depraved offspring. It is the most appropriate and adequate punishment, and the most powerful deterrent which can be devised, because of its influence both upon the criminal class and upon society in general. The greater the disposition toward such crimes, the stronger the sexual passion, the more dreadful would the penalty of the crime appear; so that this penalty will adapt itself to the varying needs of every case more completely than any other which

can be employed. An inordinate indulgence of sexual passion both induces and excites desire beyond rational control and weakens the natural powers of restraint. These crimes are the infallible symptoms of such a perversion and incurable malignity of sexual passion as to indicate unmistakably the necessity of surgical treatment. Such criminals have passed beyond correction by therapeutic means. Surgical science and skill is as necessary in such cases as in the forcible amputation of a gangrened limb. It is now possible to remove the organs which cause the offense with slight pain and entire safety, so there can be no constitutional objection on account of cruelty, and under a law this penalty would not be unusual. This done, the criminal is permanently incapacitated from repeating the offense and is severely and appropriately punished. The laws of nature and society will thus have been rationally vindicated and the most effectual warning administered to society against future crimes of this kind. This is the natural and just reaction of their crimes. Indemnity to the injured or the State is to be secured by the enforced labor of the convict.

Cowardly and brutal assaults upon women, wife-beating, cruelty to animals, and all acts indicating such a bestial disposition as is not amenable to rational and moral influences, are best to be repressed by physical appeals. There are, both in prison and out, some persons so insensible to ordinary punishment that they can only be affected by

physical pain. For such and for many juvenile delinquents a good whipping is the best penalty. Judiciously administered, it imparts a realizing sense to the offender of the criminality of his deed, and the power of law, fitting the punishment to the crime, and exercising the strongest deterrence upon those of similar natures.

The perpetration of all other high crimes or felonies which are of a sinful or vicious nature our science now regards as a certain symptom of inferior character in the criminal, which will not naturally adjust itself to its social environment. The aspect which crime presents to the law-making and executing power is that of a nuisance which must be abated. Imprisonment, therefore, is the necessary and natural penalty for such crimes as indicate moral depravity, defect, or disease, and it is specified now in the criminal codes with defined limits for various crimes. There is no other, where it is wisely imposed, that so well fulfils the legitimate purpose of a penalty. The only scientific objection to it is on account of the false basis of punishment upon which its length is limited by the codes, and the notion that any positive limitation of time is practicable or legitimate in any case.

Admitting the principle that the only proper object of human law is the protection of society, and that the sole purpose of penalties for crime is the prevention of a repetition of crime by the offender and the deterrence of others from offenses, there is no escape from the logical, rational,

and scientific deduction *that every real criminal must be confined in prison so long as he would be dangerous if at large.* Having once incurred the damage of his crime and the expense of his detection, arrest, trial, and conviction, the State cannot afford to let him loose again upon society until it has been proved that he is no longer dangerous. It has been positively demonstrated, however, that simple penal incarceration, conducted with either rigorous severity or humane gentleness, confirms and renders chronic the criminal character instead of curing it. Imprisonment as a punishment has no remedial value. Ninety per cent. of the convicts discharged from prison return to criminal lives. These are facts abundantly substantiated by the experience of the last fifty years since incarceration has been under trial as a punishment. The protection of society then requires that the criminal shall be sentenced to prison for life; that is, for his criminal life. But experience has demonstrated that a large proportion of criminals can be cured of their criminality by a scientific treatment of their diseased character while in confinement. Eighty-three per cent. of the convicts confined in the reformatory prison at Elmira during the last twenty-five years, even under sentence with a maximum limit, are reported to have been restored to honest and industrious lives.¹ Doubtless a larger per cent. might have been cured if the treatment could have been longer in the more

¹ See Year Book of Elmira Reformatory, 1899.

severe cases. The life sentence, then, is not without hope if the criminal is confined where he can receive curative treatment. Imprisonment in a scientifically conducted reformatory for life is not only not hopeless—it is not even a severe penalty, for it places the responsibility of release on the shoulders of the convict himself. It puts the key of his prison door in his own hands and commands him to work out his own freedom if it be in him. The State deprives him of his liberty but provides for him every appliance, every educational, curative, and reformatory advantage which science can devise for his assistance. Skilled doctors study his disease, prescribe and administer the remedies. He enjoys privileges and opportunities which few of those outside of the prison can have. The most perfect appliances of the modern moral hospital are his without cost ; so that his sentence is the greatest benefit which can be conferred upon him rather than a cruel punishment for his evil deed.

Having adopted imprisonment as the penalty for felonies, *science requires the State to provide reformatory prisons for the first confinement of her convicts, and that they shall be sentenced to such reformatories under an indeterminate sentence.* There will of course be some chronic, incorrigible criminals who cannot be restored to liberty even after the most exhaustive and persistent treatment. As soon as it can be decided that the disease of a convict in the reformatory is so obdurate and deep-seated as to be incurable, provision must be made

by law for his removal to a penitentiary intended solely for secure confinement and economical maintenance, where he can spend his remaining days in useful employment. This will dispose of all the more dangerous in the criminal class, the insane, habitual, and instinctive categories, and dispose of them completely and permanently. They comprise, as we have shown, about half in number of the criminal class and constitute the part which is by far the most to be feared and most troublesome to control. It is an entirely practicable solution of the most urgent part of the problem.

There remain only the categories of "First Offenders" and "Misdemeanants" who are liable to legal penalties to be dealt with. If by laxity of police administration, or miscarriage of criminal jurisprudence, a first conviction should happen to occur for a felony or heinous crime, the culprit would naturally be referred to the category of "Instinctive Criminals," and become subject to the rules established for them. Scientific Penology prescribes for the actual "First Offender" an entirely different course of treatment. The first offense is assumed to be a premonitory symptom of a tendency to the criminal disease, rather than a positive evidence of its presence. It suggests preventive rather than curative therapeutics, hygienic instead of hospital treatment. Brief confinement in a house of refuge, jail, or prison, in association with the criminal social refuse gathered there, is certain to establish and confirm the hold of the disease upon

the character. The dangers and evils of imprisonment under the present method greatly outweigh any possible good to be hoped for from it. Nor is the imprisonment of the first offender necessary for the social defense, for the restriction of crime or deterrence from it, because this may be better attained in other ways. It may be stated as a penologic law, *that temporary imprisonment must never be imposed as a penalty when any other can be made to satisfy the conditions.* The stigma of the prison, the corruption of the associations, the long days of idleness, the physical deterioration, work a speedy and total ruin of the tainted character.

"The prison from every point of view is the chief ostensible promoter of every ill it essays to cure." "It succeeds in turning out more direct results in the shape of confirmed criminals, hardened to the contemplation of theoretic vice in all its forms and degrees, ready to put their knowledge into practice, than any other accredited agency within the range of experience or devised by the folly of man."¹

It is the unanimous opinion of all who have given intelligent consideration to the matter that a short term of imprisonment in the ordinary jail or penitentiary is the most pernicious penalty which the law can use, a stultification of justice, a parody of crime by the State. The slight offense of the "First Offender," which does not positively indicate a condition of moral depravity, inflicts an injury either upon an individual or upon the State. An enforced

¹ *The Criminal*, Drähms, p. 193, and Dr. Eugene Smith on County Jails, National Prison Association, 1885.

indemnification of the injured party by the offender which will make the cost of the offense exceed the expected satisfaction from it, is a penalty which fulfills the rational object of a penalty without the objectionable features of imprisonment. It relieves the State from the obligation of providing comfortable quarters and subsistence as an invitation to and reward for petty misdemeanors, and from the absurdity of offering a more attractive method of livelihood than self-support by honest labor. As the State has accepted the duty of protecting its citizens from crime, it must certainly, so far as it is able, make this protection complete. Having arrested the offender, it is in its power to exact indemnification to the full ability of the offender to make it, and it must exact it. If the offender has property or means to satisfy the injured party, the law should give the claim of the State a prior lien to that extent, by virtue of the criminal conviction, and without the necessity of civil proceedings with legal costs, which in a majority of cases prevent the attempt to secure indemnity in the civil courts. The sentence for the crime should fix the indemnity, and prescribe the method of its collection. If it can be rendered only by labor, as will frequently occur, the State, being responsible for the injury to its citizens because of its failure to protect them, must assume the indemnification of the injured, and proceed to recoup itself from the wages or services of the offender. When the offender is too young to make this resti-

tution himself it should be exacted of parents, or other responsible relatives or guardians, who should thus be compelled to control their children. If there are none from whom such exaction can be made, the State must assume parental care by a probation officer. Juvenile offenders are more fully considered in another chapter. The indemnification must be prompt and full ; the injured should not be compelled by the State to suffer additional loss and damage by delay ; and it must be proportioned according to the ability of the offender to pay, or to work it out. The offender must work under the surveillance of the officers of the law and refrain from crime, vice, and disorder, until the demands of the law are satisfied. If the offense was against the State or social order, the measure of social damage should be fixed and collected by the law. Fines collected by the State should constitute a special fund for the payment of indemnities to individuals, and the expense of detecting crime. Such a penalty receives the approval of the popular sense of justice, restrains the well-to-do from violation of law by the fear of having to make strict restitution, and the penniless by the dread of compulsory labor for the benefit of others. By its palpable justice it removes many difficulties which now interfere with the detection and conviction of offenders. The arguments and authorities which sustain the principle of indemnification are fully and conclusively presented by Professor Ferri¹ and Dr. Drähms.²

¹ *Criminal Sociology*, p. 218.

² *The Criminal*, p. 351.

This scheme of legal penalties reduces their number for all crimes against the person, property, and the State, below murder and the grossest sexual crimes, to these two, the indeterminate sentence, and indemnification. The first requires the institution of suitable reformatories, the second a provision of legal probation officers, to watch over and collect the indemnities from offenders at large in society. It secures the greatest efficiency to criminal law, minimizes the cost of its execution, relieves judges from many embarrassing responsibilities, and satisfies, so far as is possible by human law, the demands of justice.

CHAPTER VIII.

THE INDETERMINATE SENTENCE.

Substitution of Reformation for Punishment—Origin and Development of the Reformatory System—Comparison of Results at Elmira and in New York Prisons—Success of Reformatory System Demonstrated by Z. R. Brockway—His Statement of its Principles—Punishment by Reformation the Natural Reaction—The Theory of Reformation is the Cure of Disease—Time Limits for Cure Absurd—Varieties of the Disease—State of Opinion in the World Concerning the Indeterminate Sentence—Physical Obstacles to its Adoption—Metaphysical Obstacles—What the Real Indeterminate Sentence is—Who shall Pronounce the Cure?—Existing Practice Devolves the Decision on Wardens—Objections—Advantages—Objections to Reformatory System Considered—The Tribunal of Discharge and Appeal—To Whom the Sentence should be Applied.

“THE reformatory system marks a new era in the development of Penology in the United States. The classification of crimes and the imposition of penalties based on the purely punitive idea, in which so much suffering is meted out for a particular offense, rest on a false conception and must ultimately give way to the more scientific principle involved in the indeterminate sentence.”¹

This principle is no longer novel or experimental, although it has never yet been fully adopted or tested in any State as the basis of its criminal code.

¹ *The Reformatory System of the United States*, International Prison Commission, 1900, S. J. Barrows, pp. 14 and 15.

To Mr. Z. R. Brockway belongs the honor of having proposed the substitution of this idea for that of the fixed penalty, while director of the House of Correction in Detroit, Michigan, in 1867. He then procured legislation to govern that institution which contains the germ afterward developed in the law he drafted for the Elmira Reformatory in 1876. There he tested and demonstrated for a quarter of a century the practicability and advantages of the reformatory process more decisively than any other man or institution in the world. To him is due the credit of having not only practically invented, but, what is much more difficult, proved by actual use, the inestimable value of the indeterminate sentence. His successful introduction of his invention has revolutionized Penology as positively as the invention of the Bessemer process revolutionized iron-making, and with economical results which promise to be equally important sociologically with those which have followed that epoch-making invention. For humanity may profit quite as much by wise economy in the use of its resources as in increased capacity of production; by conservation as much as by development of energy.

Mabillon, a famous Benedictine monk, Abbé of Saint-Germain in Paris, who was born in 1632 and died in 1707, one of the most learned men of the day of Louis XIV., foreshadowed many of the features of modern prison discipline and of prison labor, and discussed in his dissertations the matter

of reformation in prison discipline. Clement XI. built St. Michael's at Rome in 1704, and placed over the entrance this inscription: "Clement XI., Supreme Pontiff, reared this prison for the reformation and education of criminal youths, to the end that those who, when idle, had been injurious to the State, might, when better instructed and trained, become useful to it."¹ Viscount Vilain XIV., Burgomaster of Ghent, "is justly entitled the father of modern penitentiary science."² Both Captain Alexander Machonochie at Norfolk Island, and Archbishop Whately of Dublin in 1832, suggested labor sentences in place of time sentences; and most scientific students of criminology during the last quarter of the nineteenth century have advocated by voice and pen the adoption of the principle of reformation and its necessary corollary, the indeterminate sentence; but the name of Z. R. Brockway will always be illustrious in history as that of the man whose life-work was the first successful demonstration of a practicable method of reforming the criminal.

Of the 6190 convicts paroled from the Elmira Reformatory previous to September 30, 1899, he estimates, in his report for that year, that 5164, or 83.4 per cent., were permanently reformed and restored to useful and honest citizenship. Of the 2089 convicts received in the Sing Sing, Auburn, and Clinton prisons during the year ending Sep-

¹Dr. Carroll D. Wright, Report of *National Prison Association*, 1899, p. 211.

²*Punishment and Reformation*, p. 136.

tember 30, 1898, 949, or 45.4 per cent., were recorded as recidivists.¹ There were 1556 convicts discharged from these prisons in that year; a number 533 less than that of those received, of whom it may be assumed that as all have been stigmatized as criminals, and no effective effort made for their reformation, because experience proves this to be almost hopeless in prison, at least 80 per cent.,² or 1245, returned to criminal practices and lives. But if the 6190 convicts paroled from Elmira had been discharged from prisons and only 45.4 per cent. of them had returned to criminality, according to the proportion of recidivists in the prisons of New York, these would have numbered 2810 instead of 1026. That is, Mr. Brockway, his invention, and his institution, have effected an economical saving to the State of New York of 1784 good citizens, worth, at \$2000 each,³ \$3,568,000. Besides, there has been saved an annual cost of \$150 each for their maintenance as convicts, which for an average of 6.4 years (the average length of sentence, exclusive of life sentences, of the 3033 convicts in the three prisons September 30, 1898) amounts to \$1,712,640. This takes no account of the saving of the losses by crime, the costs of detection, arrest, trial, and conviction. Deducting the \$150 maintenance cost from the \$1500 estimated cost of every convict to the State

¹ *Report of State Prisons for 1898.*

² *The Reformatory System in the United States*, 1900, p. 19.

³ *Prisoners and Paupers*, p. 149.

made in Chapter I., we should add \$1350 apiece to these sums, or \$2,408,400. Thus the cash value of Mr. Brockway's service to the State of New York for the last twenty-five years makes the grand sum of \$7,689,040; an average of \$307,560 per annum. Assuming a probable recidivism of 80 per cent. among discharged convicts to be correct, this saving by the same method of calculation has been \$16,881,800.

But Mr. Brockway has asked for no letters patent upon his invention to limit its use in any manner; on the contrary, he has labored with great ability and the most generous philanthropy to persuade others to adopt and profit by it with entire freedom. He had absolute confidence in his theory of reformation, a marvellous genius for comprehending the means essential to effect it, and a peculiar God-given personal magnetism, grace, influence, or whatever we may term that power which accompanies complete devotion to a lofty and noble purpose. Thus he was enabled to secure and use the necessary means to inspire hope in the most depraved of his subjects, to enlist the enthusiastic co-operation of his assistants and associates, and to expound and impress his convictions on others. He has endeavored, by writing and speaking on all suitable occasions for more than twenty-five years, to promote the substitution of intelligent science for brutal penalties in dealing with criminals. In the change of base from punishment to reformation his achievements equal those of John Howard

in philanthropy, and exceed them in originality, importance, and economic value. No philanthropist in America has better earned the title of public benefactor than Z. R. Brockway.

A change from the punitive to the reformatory system in dealing with criminals does not betoken a disposition to derogate from the immutable and divinely ordained law of compensation and punishment for crime. There is no better statement of the position of modern penologists than that made by Mr. Brockway himself.

“The reformatory prison system belongs to the school of the utilitarians and experimentalists. It is ranged under a motto which reverses that of the classical school of penologists, its motto being ‘Prevention the principle, punishment the incident.’ It seeks the public protection through the reformation of criminals, and counts it of small moment whether the prisoner undergoing the reformatory process is pleased or displeased thereat. It is held by the advocates of this system that all the ends sought by punishment for crimes, by all the schools, are best attained when protection by reformation constitutes the whole purpose and method of prison treatment; and that by this means there is incidentally reached the nearest possible realization of justice, the equitable adjustment of pain to sin. The real reformation demanded by this reformatory system is necessarily a rigorous experience for prisoners; so irksome that they would scarcely choose it, yet because the purpose of it is to accomplish a remedial result, it can scarcely be considered, either by the subject of such experiences or by the observer, as an unjust penalty. The just retribution for crime or sin is always the necessary cost, to the criminal or the sinner, of recovery.

“The principles of treatment thus adopted are applicable to all grades of criminals, misdemeanants, and felons, whether

they are estimated, at conviction, as corrigible or incorrigible. It is a self-evident proposition that the criminal shut up for the public protection should remain restrained of liberty until he is so changed of character as to be reasonably safe for release. The prisoners are taken into the custody of the State because they were adjudged to be dangerous if at large. During their imprisonment they are to be transformed into safe citizens of the State. This is reformation in the State sense of the term. What more can the State desire or require than that criminals, when released from prison, shall obtain legitimately the means of their subsistence and satisfaction, and in all respects obey the laws? What less should the State demand? Let the comparative value of prison systems be judged by this standard and their method by this result. If such reformations are best wrought out by retributive punishments, that method should be pursued. If by penitence, the product of presenting the religious motive and the influence of personal persuasion, then make the most of moral and religious ministrations; and if such an actual change of life and social relations can be promoted by wise training of prisoners in their behavior, their moods and moral tendencies not only, but also a worldly training in industry, economy, in intelligence and self-regulation, then despise not and neglect not such an agency.”¹

The suitable punishment is inflicted by the severity and duration of the disciplinary training required to transform the criminal into a safe citizen. This severity and duration will naturally proportion its reaction to the degree of depravity or criminality of the prisoner. The greater the criminality the longer will be the time required for reformation, and the more repugnant and grievous will be the necessary discipline. There is no

¹ *The Reformatory System in the United States*, 1900, p. 22.

remission or decrease of punishment by the adoption of the reformatory principle, but rather the substitution of an exact adjustment of the degree of punishment to the degree of guilt by nature, as the time required for reformation varies according to the obduracy of the case, in the stead of the arbitrary guess of various magistrates.

The reformatory system is based upon the demonstration of the science of criminology that the character of the person who commits a crime is different from that of an honest person. Stated in this concise form the fundamental proposition does not appear to require the support of proofs, but is accepted by the reason as axiomatic. Science, however, penetrates into the details of the difference between criminality and honesty of character, and discloses the causes, symptoms, and nature of this difference. Its discoveries confirm the theological dictum that the original normal man was a perfect organism, physically, mentally, and morally, whose actions and functions were naturally healthy and correct. Disease, defects, error, vice, and crime, are results of deviations or aberrations from the normal type of organism which can be largely corrected by intelligent treatment. Criminality or moral depravity is one of these imperfections or diseases, which abundant experience at Elmira and elsewhere has proved to be quite as responsive and subject to therapeutics as any which science has subdued. Failures of reformatory measures in the past, it is understood, have been quite as generally due to lack

of a proper understanding of the case by the reformer as to the obduracy of the patient ; failures of reformation of criminals by the State chiefly to what is now recognized as the absurd limitation of the duration of treatment by law, the definite time limit of sentences. The acceptance of the reformative motive, instead of the solely punitive, of necessity involves the removal of maximum time limits from all sentences.

“ The indeterminate sentence treats the criminal as belonging to the defective, abnormal classes who are the wards of the Government. By the true psychology of crime, the criminal demands governmental care and treatment on the same grounds with the lunatic, the idiot, the blind, and the dumb. He is a defective, mal-developed, abnormal being, differing from the other classes, which are more distinctly recognized as the defective classes, in two particulars. It is more dangerous to the community that he should be at large, because of the direct injury that he does and because of the corrupting influence he exerts ; and, in the second place, he is more amenable to correct treatment, and more easily curable than any other class of public wards.”¹

If criminality is a defect of character, or a disease to be remedied or cured, common-sense rejects the fixing of a positive time in which the cure shall be effected for every individual who commits a certain crime alike, whatever may be his actual condition or variation from the normal, as absurd. Such sentences are as irrational as the employment of a doctor for a serious ailment on a time contract ; as

¹ Dr. Eugene Smith, American Social Science Association, *Reformation or Retribution*, p. 3.

impossible as the "due and forfeit" pound of flesh in Antonio's bond to Shylock.

"The method of apportioning penalties according to the degree of guilt implied by defined offenses is as completely discredited, and is as incapable of a part in any reasonable system of social organization as the practice of astrology, or the police against witchcraft. It holds its place merely by the tenacity of custom and the inertia of opinion controlled by tradition."¹

Experience with the Bertillon system of identification gives absolute proof that it is impossible to find even two criminals alike in the whole world. There are as wide variations in criminal character as in measurements. Each convict requires individual personal treatment adapted to his particular condition just as imperatively as every patient in a hospital requires special prescriptions. There were 966 convicts serving sentences for burglary in the State prisons of New York in 1898, each crime doubtless different from the others, and every burglar certainly so, but the extreme limits of the criminal code of New York only allow a variation from one year to a life sentence for the crime of burglary. For these 966 burglaries there could only be a fixed variation of a few years in the legal punishment of imprisonment inflicted. For the most heinous burglary the judge might imprison a man for the rest of his life, a term which might vary widely on account of the age of the convict, and

¹ *The Reformatory System in the United States, 1900*, Charlton T. Lewis, p. 60.

might extend far beyond the time which would under any circumstances of disease be required for reformation and cure if the convict were curable; while the minimum of one year would scarcely be sufficient for the reformation of the least depraved.

Our science, then, demands the indeterminate sentence as an essential element both of the reformation of the criminal and the protection of society. Almost every penologist of distinction abroad and at home has urged its adoption in every possible manner for years, but it has never been enacted in any of the United States in its entirety, although several States have passed permissive laws, but even then with a maximum limit to imprisonment. Indefinite imprisonment exists in several foreign countries, based upon cumulative sentences for incorrigibility, as in England, India, Japan, and France; but there has been no absolute indeterminate sentence, such as the science of penology, logic, reason, and human progress unequivocally demand, adopted in the criminal code of any foreign or domestic state. The obstacles which have hitherto prevailed against its adoption are great and difficult to overcome. Public opinion must be not only educated up to the plane of the scientists, but also change the convictions of all its past history in replacing the principle of retributive punishment by that of punitive reformation in its criminal jurisprudence. To accomplish such an education and change of

conviction is a labor of great magnitude, hardly possible in a few years. It would seem now that this obstacle is rapidly disappearing. The public opinion, which legislates and rules ultimately, and intelligent sentiment everywhere, are informed on this subject, and interested in both its philanthropic and its economic phases, more than ever before. It is one of the sociological subjects which the advance of civilization and the increasing density of population are pressing continually into urgent prominence.

When public opinion arrives at the point of action on this subject, two great physical obstacles will have to be removed. First: The whole existing code of criminal law, and much of the practice of courts, the growth of all the ages, will have to be repealed and cast aside as useless, and the new but much simpler code substituted in its place. It requires men of courage, self-reliance, and determination to undertake and carry forward to a successful issue such a legal revolution as this. There are few pecuniary rewards, and only an indefinite amount of honor attending success, to invite to the undertaking as compensation for its labors. But this field offers an opportunity for philanthropic achievement, service to humanity, and fame, even, which will not be neglected when the time comes.

Secondly: The large and expensive plant of prisons which mankind has erected for the confinement of criminals, calculated and designed simply

as places for secure punishment, require very considerable expenditures to adapt them to a reformatory system. Legislators prefer appropriations which promise a more immediate return. But the reformatory prison is a necessary antecedent of the indeterminate sentence. There must be a place provided where the criminally diseased can be skilfully and scientifically treated for cure, before he can be justly committed indefinitely into the doctor's charge. The limited and tentative enactments which have already been made afford opportunity to provide the necessary reformatories, and are, therefore, steps of progress toward the desired end. So complete a revolution cannot be effected suddenly without inordinate violence and expense. The gradual transformation of some of the State prisons into reformatories, and the adaptation of others to the permanent seclusion of the incorrigible; the education and training of reformers and their staffs of assistants; the development of the institutions and of the skilled professional class needed to manage them, are the work of considerable time. Economical reformation is impracticable without both the men and the means which experience teaches are indispensable to success.

Besides these two physical obstacles there are three or four metaphysical objections to the indeterminate sentence to be overcome. The conservatives who oppose all change and progress have urged their usual final objection of unconstitution-

ality against it. This claim was once sustained by the Supreme Court of Michigan, but the courts of seven other States have since rejected it, and the legal profession have come

“to a substantially unanimous conviction that there is no validity in the objection. The overwhelming weight of judicial opinion holds that the legislature may assign to offenses precise and unvarying penalties, or may leave to the courts full discretion to fix them, with or without specified limits, and with or without conditions ; that the pardoning power, even if constitutionally vested in the chief executive alone, is in no respect qualified or impaired by authorizing other officers to ascertain when any conditions thus imposed are fulfilled ; that in short such determinations and the consequent release of the convict, are the execution of such a sentence and not an infringement of it. These principles are now so fully established that the rather technical quibbling which has occasionally been heard against them would require no mention but for the momentous fact, which must not be concealed or evaded, that the savage theory of retribution has for generations controlled and shaped, not only the thoughts of men in relation to crime, but our systems of penal law and in some degree our written constitutions themselves, and long before the reconstruction of criminal jurisprudence on true principles can be completed, the reform will come into severe conflict with the forces of time-honored prejudice and narrow conservatism entrenched in these strongholds. Let me frankly say, then, that while the timid beginnings of legislation in the direction of science and humanity which have been obtained in eight or ten States of the Union, providing for partial and imperfect experiments in reformatory imprisonment, have in no case gone further than our constitutions permit, or than the body of intelligent public opinion will sanction, yet these are the beginnings of a revolution which is destined radically to change men’s habits of thought concerning crime, and the attitude of society towards criminals, to rewrite from end to end every penal code in

Christendom, and to modify and ennoble the fundamental law of every State.”¹

The “indeterminate sentence” is a sentence which commits a convict to confinement in a scientific reformatory until he is pronounced fit to be restored to social freedom by a competent tribunal ; with the condition that when this tribunal pronounces the convict incurable or incorrigible he shall be transferred to a prison, where secure seclusion and the cheapest maintenance are the chief objects, for continuous imprisonment. In this prison or penitentiary the more expensive efforts and agencies of reformation and cure yield precedence to economy of administration ; but the convict may still achieve his liberation by satisfying the tribunal of his cure. The convict holds the key of the door of the reformatory in his own control so long as he is in it, and if he goes to the penitentiary he is again given the key of that door also. The hope and possibility of liberty are never entirely cut off. Despair and imprisonment for life are the consequence solely of his own contumacy and incorrigibility. The responsibility for the severity of his punishment is thus always left resting upon himself. No definite end or limit for the imprisonment is or can be rationally connected with the sentence. The commitment is like that of an insane person to an asylum, or a sick one to a hospital,—until cured. The disease is dangerous to the public, therefore

¹ *The Reformatory System in the United States*, 1900, Charlton T. Lewis, p. 67.

the State must keep the criminal shut up for the protection of the public, until it is assured by competent authority that it will be safe to discharge him ; but the hope of release lasts till death.

Who shall be commissioned to give this assurance, upon which the safety of society and the fate of the criminal depends? If it is found necessary to withdraw the power which is now entrusted under the limitations of the law to the learned and honorable judges who preside at the trials, upon whom shall it be conferred? Who will exercise it more wisely, honestly, equitably, and satisfactorily? Is every one to be exposed to arrest and imprisonment for life for some youthful indiscretion, or error of judgment, or minor crime, or malicious accusation supported by false witnesses? These are the crucial questions which must be answered before the indeterminate sentence can be practically possible. It is because no popularly satisfactory reply has yet been made to them that this great reform has halted so long upon the threshold of acceptance, "and makes us rather bear those ills we have, than fly to others that we know not of."

Where the indefinite sentence with a maximum limit of imprisonment has been legalized in this country, the power of conditional liberation on parole and final discharge has been conferred upon the board of managers of the institution. The board of managers is appointed by the Governor of the State, sometimes subject to confirmation by

the Senate. The board selects the superintendent, and makes the rules and regulations governing the administration of the institution, the reformatory treatment, and release of prisoners in accordance with the law. The members of the board are usually men of character and influence, actively occupied with their private affairs, who meet at stated periods for the transaction of the business of the board from a desire to render some personal service to the public. They serve without pay, at more or less sacrifice of time and convenience, and are naturally disposed to make these sacrifices as small as possible consistently with a faithful discharge of duty. The superintendent or warden is their executive and agent, in whom they have confidence; for unless they have confidence in him they greatly err in retaining him, and in becoming responsible for his faults. The recommendations of the superintendent concerning the treatment and discharge of prisoners, therefore, have very great weight, and are almost always adopted, unless valid objections are made to them. The result is that the power of release devolves, in fact, upon the recommendations of the warden. The public know that many wardens are appointed as a reward for political service rather than on account of any particular fitness for so important a position as that would be under the indeterminate sentence. Hence it wisely concludes that the decision concerning the length of a criminal's imprisonment will be safer in the control of the

learned court under the law, than in the hands of political wardens of the present style.

Conscientious wardens, on the other hand, shrink from the assumption of so grave a responsibility as is involved in the imprisonment of criminals for life. They appreciate the harassing disturbance of unceasing appeals by relatives and friends for change of decision, the power of political "pull" and dictation, the danger of bribery and corrupting influences upon members of the board of managers, their subordinates, and themselves; and especially the weakening of authority and the diminution by accusation or suspicion of yielding to such influences, of the convicts' respect and confidence in their unswerving justice and firmness, upon which the success of their reformatory measures depends. Such wardens are the great leaders in penological reform, who have brought the science to its present plane. The public courage falters and halts when the voices of the captains are silent.

Experience with the indefinite sentence under which criminals are permitted to obtain a reduction of time by good behavior has shown, moreover, that the most incorrigible, vicious, and dangerous criminals are likely to be the best prisoners. The "smart" convict bends all his efforts to shorten his term in prison in order to hasten his resumption of crime. Good conduct, which secures an amelioration of the rigors of punishment, is not a reliable indication of a reformed character. The evidence which has been depended upon to

prove the progress and completion of cure under the indefinite sentence, and which is popularly supposed to be the chief guide for the decision of the warden concerning the disposition of the prisoner under the indeterminate sentence, has often turned out to be utterly fallacious and unreliable. There is apprehension on this account that wardens will be led into serious errors of judgment, and be deceived into the premature discharge of dangerous criminals by their cunning simulation of goodness. This might possibly occur with a new, inexperienced, politically appointed warden, but is very improbable with a scientific expert, such as should be in charge of a reformatory.

A warden has ample time for observing and studying every prisoner in his charge; he investigates his previous record, family, and life, and examines into the circumstances of the crime committed and the character of the convict when received. As the three elements of the character respond to or lie dormant under treatment, he must watch and adapt his treatment to the ever-varying phases of recovery. He can apply repeated tests of all kinds to verify his judgment, and is under no necessity of reaching an immediate or hasty conclusion. His advantages and opportunities for information, study, and consideration, as well as his diversity of experience, are immeasurably superior to those of a judge who can devote only the brief time of trial to each convict, and must trust more to intuition than

information or reason in formulating his sentence. It is rather an argument in favor of the indeterminate sentence that all the time and means necessary may be occupied in arriving at an accurate and sound decision concerning the release or incorrigibility of all convicts.

Some object also to the reformatory system of which the indeterminate sentence is an element, because the course of education and training provided by it for criminals at the public expense is so superior to that which is available to the honest majority of citizens as to make it a premium and reward for criminality. They claim that it is unfair and unjust to give privileges to the enemies of society which cannot be granted to those who remain at peace and in harmony with it. To this it may be replied that the doctor is called to the sick, and not to the well. Nurses and medicines are provided, and whatever expense can be possibly defrayed is unhesitatingly incurred, in the hope of restoration to health. The Saviour left heaven and came to the earth to call sinners and not the righteous to repentance. Society is compelled to protect itself at any cost, and protection is economical even at the highest cost.

Others, on the contrary, profess repugnance to this sentence on account of the alleged cruelty of unlimited imprisonment. They object that such a sentence causes more suffering to the convict than the tortures of ancient times, and that it is a reversion to barbarous penalties. They argue that

possibly some one might be committed for a minor offense which had always by the common consent of mankind been expiated by a light penalty or brief imprisonment, and nevertheless might fail to earn his release and remain a prisoner for life ; that it is a monstrous tyranny to condemn one to life imprisonment for a petty larceny or similar violation of law, even though a way is open by which he may earn freedom.

“ This apprehension has led, in almost every statute authorizing a reformatory sentence, to a provision for the maximum term, fixed by the old retributory code ; at the end of which the prisoner must be freed, however certain it be that he will plunge at once into crime. The charge of cruelty justly lies, not against the sentence which would restrain him, but against that which would dismiss him to his ruin and to the damage of mankind. The criticism is founded on the false notion that his confinement is a punishment for his offense. Unless the conception of penalty and the thought of any relation or proportion between it and the crime is utterly abandoned, no right thinking on the subject is possible. As long as a man cannot be at large with safety to himself and others, he must be restrained. This is the dictate of mercy itself, and the particular act which has first disclosed to the community his character and its danger, has no bearing whatever upon the question. It is the interests of society and of the convict for the future, and not their memories of the past, which are to be conserved.”¹

This objection is counterbalanced by the restraint which such possibilities would exercise upon magistrates when imposing sentence, and by the force

¹ *The Reformatory System in the United States*, p. 65, Dr. Charlton T. Lewis.

which the necessity of incurring these great risks with the indeterminate sentence would add to the impress of its basic principle, that no one should ever be cast into prison so long as it is safe for himself and for society that he be free. If only those are imprisoned who are dangerous at liberty, it follows, of course, that they should never be liberated until they have become harmless. There is no rational excuse for the discharge of a criminal whom the State has at great expense once detected, arrested, tried, and convicted, so long as he continues a criminal in disposition and character, and may be expected to compel the State to incur the same expense again.

Scientific Penology, then, requires the institution of a court of last resort for the convict who might be unjustly continued in confinement; to which he should have the right and opportunity of appeal. Such a tribunal would satisfy all the rational objections which prevent the general adoption of this grand reformation of the relations between the State and criminals. The word "tribunal" suggests a proper and competent constitution of it. A bench of three judges, wisely selected, would have sufficient dignity, impartiality, justice, mercy, and wisdom to inspire confidence in the minds of the people and of the criminals that the rights and interests of both would be carefully and judiciously guarded. The superintendent of the institution where the criminal is confined of necessity should be one of the three, because he would be best

informed about the condition and character of the appellant, and best qualified to judge of his incorrigibility as the expert physician in charge of the case. There would be no appeal except from his decision to transfer to the penitentiary for life. The natural disposition of the physician, and especially of the moral physician, is against the abandonment of any case as hopeless while life lasts. If the appeal alleges prejudice, animosity, or any improper motive for the decision, the majority of the court could still be relied upon for justice. The judge who sentenced the convict ought naturally also to be a member, representing the court of original jurisdiction. Having knowledge of the previous life of the appellant, and the crime for which he was convicted, he would be held responsible to a certain extent for his fate by the community most directly interested in his detention or liberation, and would regard the interests and wishes of his relatives. The third member should be an impartial officer representing the State, elected to serve for a long term of years, with a salary sufficient to command high capacity and character. The State commissioner of prisons, having the supervision and control of all reformatory and penal institutions, the discipline and government of all the criminal class, largely independent of political and selfish motives, beyond the reach of improper influences and local sentiment, would seem to be the best adapted to complete this tribunal. The law should specify that an

agreement of two should be a final conclusion of any matter submitted to this court, and that there should be no further appeal to any other.

The institution of such an appellate court removes the main obstacle to the repeal of the multitude of specified penalties in our criminal codes, and the substitution of the single indeterminate sentence for all crimes punishable by imprisonment. Its sessions would not be frequent or burdensome to its members, even to the State official, who alone would be compelled to sit in every case tried. If so many as the twenty per cent. who fail of cure at Elmira should be identified as incorrigible, it is unlikely that more than a small number of these would appeal from the first decision of their case to such a court.

There has been much discussion as to when the indeterminate sentence should be applied to convicts, whether upon first, second, or third conviction, and also as to the crimes for which it should be imposed. The consensus of opinion, which science must accept as conclusive in the absence of positive demonstration, has enunciated this rule in settlement of these questions: *All sentences of imprisonment should be undetermined in duration, and continuous until the convict is cured.* No one should be imprisoned whom it is safe to leave at large. Every one imprisoned should have a minimum limit of sentence, proportioned under the discretion of the judge as a punishment of his crime, which must be served without reduction, before

release can be obtained, under the operation of the regulations of the reformatory.

The indeterminate sentence is inapplicable to criminals guilty of capital crimes, or those which have been adjudged so atrocious or harmful as to require imprisonment for life ; nor is it alone sufficient for crimes of lust.

The adoption of the reformatory system and the substitution of the single indeterminate sentence for specific sentences necessarily involves the restriction of the pardoning power to criminals serving under definite sentences.

This also necessitates the separation of the penalties of fines from connection with imprisonment. If a retributive fine can be collected from the resources of the convict, it can still be imposed ; but time in a reformatory must be devoted entirely to reformation of character, and can have no relation to the payment or working out of a fine.

CHAPTER IX

THE REFORMATION OF CRIMINALS

Reformation Versus Punishment — Reformation Constitutes the Science of Penology — Its Scientific Basis — Its Philanthropic and Economic Objects—The Five Vital Elements—General Characterization of Criminals by Brockway—Necessity of Classification — Principle of Classification Adopted by Brockway — The Law of Habit — Correction of Evil Habits — Physical Line of Direction — Mental — Moral — The Physical Means Used — By the Physician — By the Superintendent — Routine at Elmira—Cure of the Minor Defects of the Seriously Defective—General Defectives—The Dietary—Technical Training—The Military Organization—Discipline — Physical Punishments — Commissary, and Bertillon Records—The Mental Means, and School of Letters—Reading—The Moral Means—Influence of Example—Of the Warden — Moral Training Incessant — The Proper Subjects for Reformatory Treatment—Labor in Reformatories—Conditions of Release — Parole—Experience at Elmira—Necessary Time of Treatment—Reformatories to Separate the Incurable—Incurables to be Consigned to Penitentiaries—Size of Reformatories—Costs—Female Reformatories.

THE substitution of the reformative treatment of criminality in the place of the pre-Christian codes of the *lex talionis* is a logical development of the law of redemption by conversion to righteousness, taught by the precepts and illustrated in the life of Christ. It relegates the punishment of sin, wickedness, vice, and immorality to God, to whom it belongs, who always and everywhere proclaims, by word and acts which cannot be misunderstood, "Vengeance is mine, I

will repay"; and restricts the functions of human laws to the protection of humanity from wrong and harm by the confinement of evil-doers until their disposition to crime is removed. It replaces vindictive cruelty toward criminals with humane efforts to cure the disease which causes criminality, just as medical science has, within the last half-century, relieved the insane from the cruelties with which for so many centuries ignorance strove by bodily punishment to correct mental derangement. It recognizes the punishment of the body for the sins of the soul as an absurd and arrogant assumption by bigotry and ignorance of the prerogatives of God, an impertinent attempt by mortal men to interfere in the relations of the immortal soul to the omniscient Creator.

The reformation of criminals is not alone a Christian theory which cannot be fully verified in human life, but is now a positive and actual science, based upon facts and principles as well established as any in human therapeutics. Indeed, the scientific observations of criminologists, and the recorded results of the experiments of the last twenty-five years, particularly those of Mr. Brockway at Elmira, have not only demonstrated the reliability of these fundamental facts and principles, but they have actually constituted the science of Penology. The scientific basis of the reformatory system of dealing with criminality is :

First : The establishment of the fact that there exists a criminal class, which is not controlled

by the laws which are adequate for the government of the mass of society,—either the human laws, or the divinely ordained laws of conscience. This class is the source of all the criminal disturbance of society.

Second : That the uncontrollability of the criminal class is due to an unnatural or abnormal condition of the personal character of its members, which is properly designated a disease ; just as insanity, inebriety, prostitution, idiocy, and epilepsy are diseased conditions of the human system.

And third : That the prognosis of the disease of criminality is quite as hopeful as that of any of the serious diseases which afflict humanity.

Information secured in 1899 concerning 274,763 reported cases of smallpox, typhoid, diphtheria, and croup, showed a fatality, in smallpox of 25.8 per cent., in typhoid fever of 19 per cent., and in diphtheria and croup of 22.7 per cent., during the years 1894 to 1898 inclusive,¹ as compared with the 16.6 per cent. of failures in the reformation of criminals recorded as the actual results of the twenty-five years' practice of Mr. Brockway at Elmira. This percentage of failures, moreover, was the result of a system of Penology which limited the time of treatment to a specific maximum of duration previously fixed by law as adapted to a single symptom, the crime, instead of more rationally committing its determination to the

¹ *Public Hygiene and the State of Medicine in the United States.* Commission to Paris Exposition, 1900, p. 21.

physician in charge. Such a system necessarily caused the discharge of many of the most difficult and obdurate cases uncured, thus reducing the possible average of recoveries. *It may, then, be regarded as scientifically proved that the disease of criminality can be cured.*

The philanthropic object of reformative treatment is the restoration to the criminal of the powers of self-control by a cure of his disease, whatever its nature, in order that he may be relieved from social restraint, and receive the freedom of self-government in place of the compulsion of external authority. It aims to make a safe citizen out of a dangerous one. The economical object is the protection of society from criminal danger and ravage, the inordinate cost of repeated arrests, and the cumulative maintenance of criminals. The saving from doing away with the existing methods of propagating and fostering criminality would result in an annual reduction of at least eighty per cent. of the burden of society ; or of over \$6.32 per capita of population. The general adoption of the reformative system in the United States would therefore save its 76,000,000 of people at least \$480,000,000 a year, which is now wasted.¹

The magnitude of these objects, and the demonstrated possibility of their attainment, therefore, make this one of the most important reforms in the wide range of our political economy.

¹ See Chapter I., p. 11.

There are five essential elements in the reformatory system of dealing with criminality. First : The indeterminate sentence, securing continual treatment so long as there is a prospect of cure, and offering a constant alternative stimulus of hope and fear to the convict—hope of freedom to be earned, fear of life imprisonment to be suffered. Second : A suitable prison or plant supplied with adequate facilities and apparatus. Third : A skilled, scientific, philanthropic governor of the prison, with a competent staff. Fourth : Intelligent reformatory discipline and treatment. Fifth : Conditional liberation on parole and probation. If either of these elements is absent the system is destroyed, and satisfactory results are impossible. We will confine our attention here to the fourth or strictly therapeutic element, as the others are fully treated elsewhere in this book.

Mr. Z. R. Brockway, after an intelligent observation of over fifty thousand criminals, has made the following very comprehensive and accurate characterization of the prisoners in reformatories :

“ They belong to the grade of humanity which is inferior. The whole inmate population may be divided into two grades of inferiority—those whose defectiveness is very apparent, and others whose mental and moral defects are concealed under good (and sometimes quite brilliant) capabilities in given directions. About one half of them have been not unfamiliar with life in institutions of one kind or another, with arrests and imprisonments, temporary or prolonged, in station house, jail, or prisons for juvenile offenders or misdemeanants ;

while some of them have been imprisoned for serious crimes. More than sixty per cent. of them are practically illiterate on admission to the reformatories, and at least one third of the whole are from a class of dull scholars in the public primary schools, or truants who burrow in lanes and alleys, where they form the worst associations and personal habits. They are without the ordinary amount of imagination, and so without the common ambition of the non-criminal of their class in society. As a whole the prisoners are indolent, unstable, reckless, and unable to compete in industry with the normal workers, and perhaps they are as unable as they are indisposed to contend with the temptations of vice and crime. Many of them are dishonest, dishonorable, merciless, and base. . . . They are as a class naturally, and it may be inevitably, criminal." ¹

These inmates are not children, but adults ; as the present laws in different States limit commitments to criminals ranging variously between sixteen and thirty years of age. The average age of those sent to Elmira was twenty-one years ; 55.8 per cent. of whom were between sixteen and twenty.²

The necessities of society will for some time require accommodations for a large population, an expensive plant for their successful treatment, and a large number of scientific experts entitled to high salaries. Motives of economy will therefore compel the State to collect considerable numbers of criminals in every reformatory prison. They will consequently have to be subdivided for general

¹ *The Reformatory System in the United States, 1900*, Z. R. Brockway, p. 23. ² *Ibid.*,

treatment into classes, according to their diversities of character, so that specialists may be brought into direct contact with individuals, study the peculiarities of each, and adapt the remedial measures to each particular case. Mr. Brockway says¹ :

“ The principle of classification is a fundamental requisite for any useful effort at reforming criminals ; and its practical extension at Elmira may be thus described :

“(A) There are three character grades, with two sub-grades, one for incorrigibles, the other for some who seem to be cured of their criminal intent, but for one reason or another are detained in service, with or without pay. This last sub-grade is very small. The privileges of each grade differ, the object of the whole scheme being to intensify motives for self-support and improvement.

“(B) There are three intellectual grades, comprised in twenty-eight classes for mental development and school instruction and common knowledge.

“(C) All are then classified in trade classes, dependent on idiosyncrasies and earning opportunities ; the aim being to fit each one for easily earning an honest living, with legitimate pleasures, in free society.

“(D) Again they are classified in sixteen military companies (four battalions and a regiment), for drill and training, and the inculcation of the manly feeling, bearing, and movement thus likely to be gained.

“(E) For the third time they are classified ; now by religious persuasions, either of themselves or their families, into Roman Catholic, Protestant, and Hebrew divisions ; not to maintain or promote sectarianism, but for better impressing the men themselves, and incidentally to cultivate a tendency for religious association, when released, with others of their own faith.

¹ *The Reformatory System in the United States, 1900*, Z. R. Brockway, p. 35.

“(F) The specially defective are next divided in three groups, each representing persons of like deficiency. The first group contains those mathematically incompetent; the second those grossly deficient in morals, and the third those generally dull. These groups are again subdivided into sections for training by manual exercise, which may aid them to overcome their respective defects. Thus this whole special classification forms a manual training class, occupying the time each day for these persons which is not taken up with the general reformatory work.

“(G) A smaller number are in the physical training (or renovation) group, made up of the anæmic and undeveloped, the semi-invalids, the feeble-minded, those showing mental aberration, the sexual perverts, the moral imbeciles; to whom are added all prisoners newly arrived, who for a month are treated with baths and physical exercise in the gymnasium. The aim here is to repair and fit the organism for its normal functions, increasing nervous energy, and thus strengthening the character.”

The general plan of treatment of all classes is *discipline resting upon the law of habit.*

“We are all creatures of habit, physical and mental. Habit is formed by repetition of any action. Many of our physical habits have become automatic.” [This is equally true of mental and moral habits.] “Without entering into a physiological argument, we know that repetition produces habit, and that, if this is long continued, the habit becomes inveterate. We also know that there is a habit, physical and moral, of doing right as well as doing wrong. The criminal has the habit of doing wrong. We propose to submit him to influences that will change that habit. We also know that this is not accomplished by suppressing that habit, but by putting a good one in its place.”¹

¹ *The Reformatory System in the United States, 1900*, Dr. Charles Dudley Warner, p. 78.

Mr. Brockway says :

“ The aim is his [the prisoner's] moral regeneration by the method of habitual practice—by habitude. Under play of this motive [love of liberty] chiefly, a majority of prisoners are induced to try to regulate themselves according to the plan mapped out for them. That which is required of the prisoners under this system is most carefully regulated by the standard of requirements for orderly behavior, under the laws and government of free society, so that by observing the conditions necessary for progress toward liberation from prison two most valuable habits are engendered, namely, the habit of quick and accurate adjustment to good environment, and the habit of forethought. For the lack of these two habits many prisoners fall into crime. It is found that a majority of prisoners may in this way by this motive be led to exert themselves for change of habit, but a considerable number require for such a painful effort a further appeal to desires more immediately within the new experience. The wants of the prisoners constitute the initial agency for their improvement, the available motive to urge them along the rugged path of reformation. Only motivelessness is the state of incorrigibility. To discover or create a want is to find a motive. Given a motive you may direct a habit. To form a habit is to create character. Habit is the school of conscience. Conscience and habit reinforce one another.”¹

The methods which are employed to break up the evil habits induced by inheritance, or contracted during a neglected or badly nurtured childhood, confirmed, perhaps, by some years of repetition in corrupting associations, and the substitution for them of habits of self-control and law-observing life, must necessarily be rigorous, inexorable, com-

¹ *The Reformatory System in the United States, 1900*, Z. R. Brockway, p. 27.

prehensive, and incessant. They are governed by the natural law, *that normal function by the system depends upon the healthy condition and action, and the proper relation of all its organs.* As practised at Elmira these methods have three principal lines of direction.

The first is physical ; designed to cure whatever bodily disease affects the person ; to restore to a natural efficiency organs and members which have become weak from disease ; to develop those which are atrophied, or to induce sufficient substituted action in the case of those which are permanently dormant or wanting. This is the special department of the physician. It affords a most useful and interesting field for scientific investigation, experiment, and achievement. The patient is under the complete control of the physician. His diet and nutriment, his rest, occupation, and exercises, physical and mental, are exactly regulated, and every therapeutic agency is adapted to his peculiar requirements. The response of his nature to the remedies is continually tested and noted. The treatment is not restricted, as in ordinary practice, to the cure of the disease, but comprehends the eradication of its proegumenal and synectic causes. It is continued until the physical condition is brought up, if possible, to an approximately normal condition of health, vigor, and function. So that, with a proportionate intelligence, the decisions and judgments of the brain will be at least lawfully rational, and its volitions

legally correct. Technical training in trade classes is given every prisoner to fit him for an honorable self-support when liberated.

The second line of reformative discipline is intellectual; under the joint direction of the physician and the principal instructor. Its design is the cure of mental defects, by stimulating and developing those organs of the brain which are weak and inoperative. It has been demonstrated in the experience of instructors that a uniform, harmonious cultivation of all the faculties of the brain is necessary to insure reasonably correct function and volition. It has also been demonstrated that its dormant or weak faculties, in most cases, can be excited to action and strengthened by inspiration and exercise. This is particularly true of the faculties of reasoning and volition, which are functions of the cerebrum. If the cerebellum has had an inordinate development, while that of the cerebrum has been arrested or retarded, action is dominated by the physical or animal instincts, desires, and passions. The result is error, violence, moral depravity—the criminal. It is the province of the physical and mental doctors to restore the equilibrium of the faculties of the criminal brain, the control of action by reason and volition, and to lift the criminal by education out of the animal class toward which he was reverted.

The third direction of reformation is the line of morality. It is guided by the chaplain, who secures the co-operation of all the officials and attendants

in order to display the advantages and instil the practices of order, regularity, truth, honesty, unselfishness, and religion. The design is to implant the cardinal principles of morality and religion in the mind and soul, to develop conscience and fit it to control the human machine without the compulsion of the prison. This is the finishing stage of reformation, although it begins when the prisoner first enters, and continues without intermission until he leaves. There can be no real reformation until the principles of righteousness are made to control the life. The methods of the chaplain are governed according to the famous antithetical epigram of Dr. Horace Bushnell, which is recognized as a fundamental law of Penology, that "*The soul of all improvement is improvement of the soul.*"

The means which have been found most successful in promoting these designs, substituting correct habits for bad, and transforming the criminal into a safe citizen, are these : The prisoner upon his arrival is given a bath ; he is shaved, has his hair cut, and receives a suit of the plain uniform worn by the intermediate or second grade of the three into which all the prisoners are divided. He is measured by the Bertillon method, for the purpose of looking up his record, if he has one, and for future identification ; and then he is locked in his cell for a day or two of reflection. After this opportunity to come to what senses he has he is taken before the superintendent. This officer makes an exhaustive examination of his physical, mental, and moral

condition, and ascertains the character and habits of his parents as to honesty, temperance, industry ; as well as what his home life has been, his habits, and associations. His physique is carefully examined as to health, normal completeness, inherited peculiarities, fineness or coarseness of texture. His mental capacity and education are ascertained, his moral character determined : as to its fibre, sense of right or wrong, of shame, susceptibility to praise or blame, religious principles or beliefs. The results are summarized in a ledger, together with those of the examination made by the physician, and from them the assignment to the various classes is made by the superintendent, according to health, character, education, and disposition.

The physician prescribes a regimen of hygiene and sanitation ; which includes, besides such medication as may be necessary, and the proper weight and quality of food ; massage, baths, and the calisthenic, gymnastic, and mental exercises and manual training needed for the development of weak or inoperative organs.

The superintendent explains to the newcomer the reasons for his confinement, the course of treatment to which he is to be subjected, the maximum time limit of his imprisonment, and the conditions on which he may shorten this term, and even win release in one year, at Elmira. A printed copy of the rules and regulations of the reformatory is given him, and he is informed that everything he receives from the State (except the first suit and

first meal), clothing, food, instruction, doctoring, as also fines for demerits, misbehavior, want of application and interest in self-improvement, will be charged against his account at the specified rates ; and that he will receive credit for good demeanor, military drill and discipline, application and merit in school, manual training, the quantity and quality of work done in the industrial departments, and progress in morality. He is at once placed in the condition of a wage-earner and required to maintain a credit balance, which must be sufficient, when parole is given, to defray travelling and other necessary expenses to the place of employment. The rate per day for work is least in the lower first and second grades ; increased in the upper grades. Time spent in military drill is credited at grade rates for privates, and increased rates, according to rank, for officers. A perfect monthly record in conduct, study, and labor is one wherein the losses do not amount to one dollar. To maintain grade, marking must be above seventy-five per cent. in all three divisions. Reduction in grade is incurred by an imperfect record for two successive months : for crookedness, quarrelling, licentiousness, insubordination, and such disregard of rules or requirements as shows indifference to progress, or great want of self-control. Promotion to the upper first grade is gained by maintaining a perfect record for six months. Six months of good performance under somewhat enlarged liberties and privileges in the upper first grade, if the confidence of the

management and employment outside have been secured, entitles to a parole. Six months of good conduct on parole usually secures a complete release. Having made him understand as fully as he can that his release depends upon his own honest and active co-operation, the prisoner receives his billet and number, is turned into the machine, and the work of purgation and reformation is begun.

At Elmira the bugle sounds the working-day routine as follows: Reveille at 5.40 A.M., Fatigue call 5.50 A.M., Assembly 6.00 A.M. for breakfast, Recall 6.35 A.M., Return to cells 6.55 A.M., Officers' call (officers' bucket turnout) 7.05 A.M., Fatigue call (general bucket turnout) 7.10 A.M., Assembly (turning out with buckets) 7.35 A.M., Fatigue call (shop turnout) 7.40 A.M., Assembly (turnout for work) 12.00 M., First whistle, 12.05 P.M., Second whistle, return from shop, 12.17 to 12.47 P.M., Dinner, 1.00 P.M., Whistle for work, 3.35 P.M., First whistle, cease work, 3.40 P.M., Second whistle, turn out for armory. After drill and dress parade the inmates are marched to their dining-rooms, take supper, are counted and marched to their cells; 6.00 P.M., School call (trade school evening); 6.15 P.M., Assembly for trade school (on school-of-letters evenings these calls are at 6.20 and 6.35 P.M.); 8.30 P.M., First call, Recall of officers; 8.35 P.M., Recall of inmates to their cells; 9.00 P.M., Tattoo; 9.30 P.M., Taps, lights out. Thus the prisoner is held in the firm grasp of disciplinary training during every working

moment and brought to the hour of sleep tired enough to welcome it, and the habit of an orderly life is instilled.

Those who require special physical development are exercised regularly in a gymnasium fitted with all kinds of apparatus, where steam baths and massage can be given, under the supervision of a skilled physical director. For the defective, weak, and dull, manual training, athletics, calisthenics, sloyd, etc., are provided.

Organic defects are treated in the gymnasium under the prescription and supervision of a skilled physical director. Regular, scientifically designed exercises, baths, and massage are employed to restore a healthy action of the skin and digestive organs, and to purify the blood. Weak and inoperative organs are developed and a normal balance of powers and faculties, to a greater or less extent, restored. This treatment, indeed, is administered to all the inmates according to their peculiarities.

Those prisoners whose defects or diseases are so great as to render them unable to maintain themselves in the general classes are assigned to the joint care of the manual-training and the physical director. These are the defectives who under the standard methods of general treatment would remain unresponsive and incorrigible ; the weak, dull, and excessively debased. They are classified in three groups :

First, the *mathematical defectives*, who are given mental and physical treatment, for improving the

functions of ratiocination ; physical exercise of weak organs, and the use of tools illustrating mathematical problems which reflexively strengthen the brain. Fifty-six, or 46 per cent. of those subjected to this course at Elmira became susceptible to general treatment.

Second, the *control defectives*, who lack sufficient power of self-control to adjust themselves to their new environment, and require a strengthening of volition, and correction of the power of evil habits and desires to enable them to submit to the regulations, and avail themselves of the benefits of the general course. Their isolation is necessary to protect the less depraved from contamination, as well as to receive treatment for the removal of the physical, mental, and moral lesions which diminish both their self-respect and their respect for order and authority. They are surrounded by the more intensive atmosphere of the training school, and are occupied with mechanical drawing, sloyd, pattern-making, wood-turning, geometric constructions, athletics, calisthenics, and baths ; and are given moral and physiological instruction. Seventy-six cases of this group, or 29 per cent. of those treated in this way at Elmira, were made susceptible to general treatment.

Third, the *general defectives*. These are the lowest grade of convicts, mentally and physically ; mostly the product of bad heredity for generations, hanging on the borders of imbecility, insanity, total depravity, complete ignorance, and incurable

deformity. They are carefully and patiently treated with physical training and exercises, baths, massage, manual processes, and related elementary instruction,—free-hand drawing from solids, elementary sloyd, clay modelling, mental arithmetic, and sentence building. Of 55 subjects of this class, 32, or over 58 per cent., were rendered susceptible to general treatment during 1898–99 at Elmira by this régime. Of the 1169 cases treated there in this way during these two years, 439, or 37 per cent., were graduated as susceptible to general treatment.

The dietary of reformatory prisoners should be scientifically prescribed for the promotion of health and strength; and not limited, as in ordinary prisons, to economical subsistence. As a stimulus to all, the best grade of inmates should have the privilege, when they have a credit balance, of choosing their meals *à la carte* from a menu of larger variety and better-cooked and -served food; the dishes ordered, to be paid for at a fixed rate.

Technical training in more than thirty-five different trades is given in trades classes to all who are able to take it. There are classes in stone-masonry, stone-cutting, bricklaying, plastering, carpentry, joinery, cabinet-making, upholstering, plumbing, tinning, steam- and gas-fitting, house-painting, paint-mixing, frescoing, sign-painting; in architectural and mechanical drawing, pattern-making, moulding, casting, iron-forging, the machinist's trade, brass-founding, casting and finishing, blacksmithing, horse-shoeing; in baking, barbering,

book-binding, clothing cutting, cooking, hardwood finishing, machine wood-working, music, photography and etching, printing, shoemaking, stenography and typewriting, tailoring, telegraphy, wood-carving, and wood-turning.

Only 14.7 per cent. of those sent to Elmira during its existence were engaged in mechanical work before arrest. Every one who leaves must know enough of some trade to be able to earn a living at it. Often the maximum limit of confinement under the limited sentence cuts short the time necessary for the full acquirement of a trade, to the restriction of the paroled man's skill and earning capacity. This affords some real basis for the jealous objections raised by mechanics, who have served their full time, against prison-taught mechanics.

Military organization, exercises, drill, and discipline have been found to be very efficacious in the reformation of criminals. Habits of erect and manly carriage of the person, care of physical health, of order, of personal cleanliness and neatness, of prompt and exact obedience to constituted authority, of concentrated attention, of quick and accurate response of action to volition ; of memory, of attention to musical rhythm in the manual of arms, company movements, and marching are inculcated by military discipline and continual drill better than in any other way yet discovered. At the same time the interest of the prisoner is awakened by the attractiveness of military movements, and his attention directed to the power of organiza-

tion, of social union, and subjection to law and order. His ambition is aroused by the hope of promotion, and of the greater privileges, pay, honor, and pleasure of command which he sees officers enjoy; whose positions he observes may be his, in time, if he is qualified. (All company non-commissioned offices are filled by the best qualified prisoners.) No other course of training has ever been devised which gives as wide, as diversified, as thorough, as easily imparted a range of elementary physical, mental, and moral culture to the lower orders of humanity. Regular and constant drill soon fixes military habits so firmly that they become in time a part of nature. The objection which has been raised, that it is dangerous to impart military instruction to the criminal class, has no real basis, so far as the reformatory is concerned; for the privates are only disciplined and taught to march, obey orders, and carry dummy guns. They are not taught the real business of the soldier—how to use the gun. The officers and most proficient are reformed out of the criminal class; the incorrigible should remain in confinement; if liberated they would be incapable of using their acquired knowledge to the public damage. The writer was strongly impressed with the truth of these observations while witnessing recently the drill and dress parade at Elmira of the four-battalion regiment of 960 convicts, whose general appearance indicated a lower order of physique and mentality than one is accustomed to see in the ranks of American soldiery;

yet it would be difficult to find any three-battalion regiment in the country (excepting three or four of the best-drilled) in which the execution of orders is more uniform, exact, and "snappy" than in this. It was astonishing to see these four battalions execute a "silent manual" of thirty-six changes of arms without a noticeable break, and conclude it with an "order arms" in perfect unison. It was an excellent exercise and test of memory. The military is a natural connecting link between the physical and mental training; a combination and fixing in habit of the elementary processes of all three lines of reformation. About 10 per cent. of the inmates of Elmira are physically disqualified for military drill.

The discipline of the institution, the prevention of escapes, guard duty, the organization for the prevention and extinguishment of fires, the ordinary police duties for cleanliness and sanitation, the preservation of order, the enforcement of the rules and regulations, are placed under the immediate direction of the military commander. He sits in a field officers' court, consisting of at least three field officers and a judge advocate, at certain fixed hours of each work-day, before which inmates charged with infraction of rules, disobedience, misdemeanors, or misbehavior, are brought and tried. The accused is protected by all the privileges and usages of the military code in courts martial; may introduce evidence, and make defense. The finding of the court is submitted to the superintendent for approval,

modification, or execution. Thus the prisoner is protected from injustice, abuse, or undue severity of wrathful punishment. The prisoner is even permitted to bring charges, properly substantiated, against other prisoners, or even against keepers or officials who may have maltreated him. No keeper or official is allowed to use violence or inflict punishment upon a prisoner, except under orders of this court, under any circumstances. So the prisoner is impressed with the beneficence and necessity of the government or supremacy of law.

There are found in reformatories, as well as in all other prisons, those who are so entirely devoid of mental and moral sensibility when committed, as to be beyond the reach of any incentive or punishment except physical pain. Their nature is but little above the animal. For such persons the general experience of wardens of prisons, after trial of bread and water in dungeons, deprivation of all privileges, showers of water, tying up in a standing position, and other ingenious methods of inflicting pain or discomfort humanely, has found spanking with a piece of sole leather softened by soaking in water the most effective, immediate, certain, and humane punishment. It should always be administered after a reasonable delay, to avoid the appearance of anger, by finding of the court; in the presence, if not by the hands, of the superintendent.

The purchase and issue of supplies, the cooking, baking, and feeding of the inmates and officials, and the keeping of the financial accounts of the

institution should be under the immediate charge of the military commissary, assisted by clerks and detailed prisoners.

The physical director has charge of the Bertillon records, and the books of demeanor and progress. Much of the bookkeeping of the institution can be done by the prisoners, both as a matter of economy and educational training.

The purely mental influences are exerted in the "school of letters," in charge of a school director, with capable assistants and lecturers, many of whom are distinguished men from outside. Educational methods, processes, and devices are inspired and governed by the known laws of mentality. They are particularly directed to the development of attention, interest, and will. At Elmira in 1899 the studies were arithmetic, twenty-five classes with eleven grades; language, twenty-one classes of nine grades; nature studies, history, literature, and ethics; all but the first two taught by lectures. Arithmetic is used to develop, first, the reasoning processes; second, to develop and train in quickness of perception; third, to develop and train in practical business habits of mechanical execution and accuracy. Language teaching is used to encourage men to think and express their thoughts; and to develop a reasonable degree of proficiency in penmanship, spelling, and the proper arrangement of words and sentences. The school of letters is intended to be quite as much a therapeutic as an educational expedient. The studies

pursued and the methods of teaching are calculated to stimulate and strengthen those faculties of the brain the inertness or weakness of which has been a cause of criminality. The design is to subject the organs of volition, impulse, and animal instinct to the control of reason and sound judgment. Both studies and methods must be adapted to the needs of ignorant and depraved men, and therefore are necessarily quite different from those used in the instruction of children. This is shown by the size of the classes, which are smallest in the lower grades and largest in the higher, reversing the order of the schools. The pedagogy of criminals is a special scientific profession of high order.

A carefully selected library is another means of mental training. Both teaching and lectures are made to excite a desire and taste for useful reading. In addition to the library, a weekly newspaper should be printed and published by the prisoners under the editorship of the school director. This affords a means of instruction in typesetting and printing, in composition, reporting, and general newspaper work. It also maintains the prisoners' contact with free society, and keeps them informed of the most important events transpiring outside. It is a reproach to modern newspapers, in general, that it is absolutely necessary to prohibit them from a reformatory; that they are unfit to be read by criminals during a process of reformation. Charles Dudley Warner has said that the weekly *Summary* published at

Elmira is about the only thoroughly clean family newspaper he knows of.¹

The moral training of the State reformatory must be ethical rather than religious. The cardinal American principle of government, the absolute separation of Church and State, must be respected there as elsewhere. The moral instructor or chaplain has the general direction and supervision of the ethical regeneration of the inmates. By lectures, by preaching, by Sunday-schools, by discussions, and other means of instruction, it devolves upon him to guide and train the newly stimulated organs and functions of the prisoner into the habits of just, true, honest, and correct action. Because this is a Protestant Christian State; because the very inspiration of reformation originates in Christianity; because both its altruistic motives and methods are Christian; and because the desired result is such a change of character as is most complete and permanent when it is controlled by Christian principle, it is necessary that the moral instructor should be an earnest, wise, and capable Christian. Clergymen of all religious beliefs should have freedom to minister to those of their own faith in prison, but the official religious services in all State institutions in this country ruled by the majority, must of course be those of Protestant Christians, who constitute the majority.

The reformation of the character of the prisoner so that he can be relied upon to properly control

¹ *The Reformatory System in the United States, 1900*, p. 58.

his action when relieved from the stress of prison guardianship, is not largely effected by lectures and instruction, either in prison or out. It is a training for the universal contest of humanity, the struggle of mental and spiritual powers for the control of animal instincts, the war of which St. Paul the Apostle speaks, "the law of my members warring against the law of my mind, and bringing me into captivity to the law of sin which is in my members."¹

It is the spirit of love, which is God, which is omnipotent, which must be omnipresent in the reformatory, ever ready to kindle with a sympathetic touch of brotherhood the fires in the new-built furnaces of life at the right moment, which must perfect and complete the work. This kindling spark is strongest when it emanates spontaneously from the daily energies of a good man. It is therefore of the utmost importance that every official, of all grades, and every employee in the reformatory who comes in contact with the prisoner, should be a thoroughly good man, whose every act and word contrast with those of criminals, and who is anxious and ready at all times to impart this life-giving spark.

The one absolutely indispensable means for the reformation of criminals, more effective than all other instrumentalities, is the influence of the Christian character of the man who has the supreme command. He must himself be inspired with overflowing love and with desire for the

¹ Romans vii., 23.

salvation of the men committed to his charge, and must possess both God-given genius and acquired skill, which will win the confidence of all, and guide them with an imperceptible, irresistible, possibly hypnotic power, along the way in which they should walk. The daily contact with a good man is a greater power than any sermon ever preached. Dr. F. H. Wines has said: "The conclusion at which I shall have arrived, after a life spent in observing the operation and effect of all conceivable prison systems, is that in all of them, the best and worst alike, the men who are saved are saved by love, and by nothing else."

The moral training is thus carried on incessantly during the whole period of confinement. When the physical and mental training have accomplished their objects, and the human system operates in correctly adjusted harmony, altruistic, moral, and religious incentives will have supplanted selfish animal instincts as controlling motives of conduct. Until this occurs, credit marks for progress along these lines, demerit marks for dereliction, and charges for indulgences supply the place of such incentives, by decreasing or extending the time of imprisonment. A notice or bill for all demerit or other charges is given the prisoner promptly, and a statement of his account on the books of the institution is rendered monthly. Thus the prisoner is constantly informed of his standing and progress toward release.

All persons above sixteen years of age convicted

of a crime the penalty of which is less than imprisonment for life, if not evidently incorrigible, incurably defective, or suffering from a contagious disease, should be committed under an indeterminate sentence to the reformatory. The reformatory should not be encumbered with hopeless cases, nor the public burdened with the cost of their useless treatment. But whenever in the opinion of the magistrate there is reasonable ground to believe a cure is possible, the sentence should provide an opportunity for adequate treatment.

The labor of the inmates of reformatories has training for its principal object, rather than production or profit. It is therefore employed in instructive work, such as building houses of stone, brick, and wood, complete from cellar to garret, with gas-fitting, plumbing, painting, tinning, hard-wood finishing, and the work of all the trades, and other such constructions, which are afterwards taken down. But all the necessary work of the institution, cooking, baking, washing, tailoring, etc., as well as repairs, enlargements, and improvements, is done by the prisoners.

The conditions of release, as stated by Mr. Brockway, are threefold :

“ First, the records made in the three departments, which taken together constitute for all men in or out of prison a basis of judgment concerning their fitness or unfitness to live at large in a community, namely :

“(a) The demeanor column in the account, which represents the prisoner's ability as well as disposition to control himself for his own interest and welfare.

“(b) The school column, which shows mental strength and judgment to direct his own good, the power of the self-controlled man.

“(c) The industrial column, which reveals skill and knowledge in industry, the wage-earning capacity of the man.

“Second, it is a condition that outside the record thus made, which constitutes the marking system, the candidate for release shall have the reasonable confidence of the management of the reformatory, whose officers must, in the nature of the case, be best acquainted with him ; confidence, that impalpable but actual sense so essential to men in their ordinary intercourse in free life, which, aside from capital and capacity, constitutes a basis of credit in commercial affairs, and of trustfulness in domestic and personal relations.

“Third, the remaining condition is, that the candidate for release shall have found, or have had provided for him, immediate industrial engagement at the trade taught him, which should be the calling he should have followed, which, if he had followed it, would usually have saved him from crime and imprisonment.

“The release is, moreover, at first tentative, on parole. The paroled inmate is held under legal control, the surveillance of the officers of the law, and friendly supervision of the superintendent, to whom monthly reports are made, certified by the employer and the nearest magistrate, showing earnings, savings, habits of life, and conduct for six months or more, until it is demonstrated that he is adjusted to lawful, orderly behavior, with self-sustaining industry and opportunity.”

At the expiration of a period sufficiently extended to secure confidence in his ability to live as a good citizen, he is finally discharged into the full freedom of social life.

During the existence of the Elmira reformatory 218 of its paroled inmates have been furnished employment at their own request in the institution for

periods ranging from one month to four years and four months, at the same pay as is given to employees from outside. Their accumulations during such employment ranged from \$21.49 to \$960.97.¹

Of the 6190 prisoners paroled under the limited indefinite sentence law, 7.6 per cent. secured their parole after only twelve months ; 21.7 per cent. after from thirteen to fifteen months ; 14.9 per cent. after sixteen to eighteen months ; 21 per cent. after from nineteen to twenty-four months ; 21.3 per cent. after from twenty-five to thirty-six months ; and 13.5 per cent. after thirty-six months.² In view of the very low character of those committed, the brevity of the average detention before achieving parole, which was 21.2 months, is not only remarkable in itself, but when conjoined to the fact that at least 83.4 per cent. of those paroled appear to have been permanently reformed, is an impressive demonstration of the efficacy of this system.

As normal youths, who have received a common-school education, are required to serve a four- or five-years' apprenticeship in acquiring a trade, or pass three years in a preparatory school for admission to college, followed by a four years' college course, before they are well fitted for independent self-support and good citizenship, while three or four years more of special study are required for admission into the learned professions, it is manifest that the best results of the reformatory treatment of criminals cannot be expected from so short a course as has been

¹ *Year Book for 1899*, p. 23.

² *Ibid.*, p. 23.

given at Elmira. But as there are no vacations, and the treatment is rigorous, compulsory, highly stimulated by the desire for release, unintermitted, and conducted by the most capable and scientific directors, obviously less time is necessary in the reformatory than would be required in free life.

When the State adopts the reformative principle of dealing with criminals, it manifests its will to compensate a citizen whom its previous neglect, possibly, has permitted to become diseased and anti-social, by a restoration of the elements of character which are wanting, whatever may be the expense or the time necessary to accomplish this. If the State had done its duty to the criminal in the plastic age of childhood, or to his ancestors, his depravity might have been prevented. Four or five years of a criminal's time cannot be spent more advantageously to himself or to the public, than in a full preparation for honest self-support.

The reformatory, then, will operate as an institution for sorting and separating its inmates into the corrigible and incorrigible subdivisions. All those who can be cured will be cured before liberation. The chronic incorrigibles will be found to consist of two classes: the incurably vicious, the physical, mental, and moral imbeciles; and those whose organization is so defective as to be incapable of restoration,—the half insane, the greatly deformed, the infirm, the incurably diseased, and weaklings. These classes are all dangerous when at large, but they should be confined under entirely

different conditions. They must be removed from the reformatory as soon as discovered, that the other inmates may not be contaminated. Their presence retards the improvement of the other prisoners, and in severe cases endangers their health and life.

The incurably vicious, who are dangerously predatory in freedom, should be transferred to the penitentiary of incorrigibles under the indeterminate sentence, where they should be compelled to work for their living and the support of dependent relatives and the State. The incapable, however, require hospital rather than prison treatment. For these, a prison hospital should be provided, as is done for the criminal insane, where the discipline and restraints are less rigorous than in the penitentiary. The principle which should govern their confinement is the protection of society from them, with economy and the least severity possible with security. There should be neither purpose of punishment nor pamper of useless indulgence. It is, however, essential that all the institutions to which prisoners may be removed from the reformatory shall be under the same general centralized control as the reformatory, to the end that the transferred prisoners may be prevented from profiting by incorrigibility and intractable conduct, and from stimulating, by the example of their transfer, similar conduct in others reluctantly remaining in the reformatory under compulsory training.

Experience indicates that the most successful

and economical administration of such a State institution as a reformatory will be attained when it is planned for the treatment of about two thousand prisoners as a maximum. The location and construction of a plant for this number in a populous State will involve the cheapest per capita cost of land, buildings, and apparatus; of officials, attendants, and employees, and of general expense of all kinds. Such a number admits the purchase of supplies in sufficient quantities to secure the lowest rates. It reduces the cost of transportation to a minimum. It warrants the payment of salaries to the superintendent and the chiefs of departments sufficiently high to attract the best talent without unduly increasing the per capita charge. So large a population, only, will be likely to supply a sufficient number of all the varieties of criminality to make full classes in every grade for instruction and training. It is readily organized into two regiments of three or four battalions each, which would, by competition, stimulate one another to excellence. It is not too large to be thoroughly well managed by one man of high ability, and none other should ever be placed in charge of a reformatory. The superintendent should be allowed to select his chiefs of staff and heads of departments, and to fix their salaries; for upon their competence his success will depend. Such a great reformatory requires a thorough classification of inmates, and the necessary separate buildings for them.

If the course of reformation be made to average

four years, an institution designed for two thousand inmates would be able to receive about five hundred a year, and would graduate to parole an equal number annually. Large States should so locate their reformatories that they will be conveniently supplied with this number. Where smaller institutions are required, they should be designed, for the same reasons, but, of course, of correspondingly decreased weight, for fifteen hundred, one thousand, or five hundred inmates, who can be similarly organized.

The Elmira Reformatory has cost a little less than \$1,500,000. The average number of inmates is about 1500. The cost of the plant, therefore, has been about \$1000 per inmate. The cost for maintenance in 1899 was \$0.409 per capita per diem, or a little less than \$150 per annum; adding four per cent. interest on the plant, at which rate a State can now borrow money, the annual cost of the reformation of criminals there averages, in round numbers, \$190 per annum. The average cost of the maintenance of convicts in the three prisons of New York, in 1899, less interest on the prison plants, was \$141.14 per annum in Sing Sing, \$141.59 in Auburn, and \$186.56 in Clinton. The average cost in the penitentiaries of Pennsylvania in 1899 was, labor and profits deducted, \$122.96 per annum; in the Ohio penitentiary on the same basis, \$145.43 per annum; in Illinois on the same basis, \$154.49 per annum for 1898.

Reformation, then, is but slightly more expensive

in first cost than punishment. It is more distasteful and dreaded by the criminal than simple incarceration, and therefore a more severe punishment than imprisonment. It would seem to be clear, now that science has positively proved these things, that the State is itself greatly culpable for its delay in adopting the reformatory principle in dealing with criminals, and thus securing the great relief from terror and taxation which it affords.

That the female criminal is equally responsive with the male to reformatory treatment has been conspicuously demonstrated by the work of the late Mrs. Ellen C. Johnson in the conduct of the Massachusetts Reformatory Prison for Women, in Sherborn, which was opened in 1877. Although there are other successful male and female reformatories in this and other countries, these two, at Elmira and at Sherborn, have not only positively demonstrated the practicability and social utility of therapeutic reformation, but have fairly earned, by their methods and success, the rank of models. The Sherborn prison is managed upon the same general principles as that at Elmira, adapted in methods to the requirements of the female sex. This subject is exhaustively treated in the report prepared by the United States International Prison Commission to the Congress in Brussels, in 1900; to which reference is made for more detailed information.

CHAPTER X.

DRUNKARDS AND PROSTITUTES.

Nature of the Disease of Drunkenness—As a Social Crime—Massachusetts Statistics—General Data—National Cost of Drunkards as Criminals—Folly of Existing Treatment—Plea of Drunkenness in Mitigation of Crime—Secondary Cause of Crime—A Crime in Itself—Importance of its Repression—A Curable Disease—Penal Aspects of Drunkenness—State Inebriate Asylums—Laws Needed—Right of Society to Suppress it—Prostitution—As a Crime—Evils—Prevalence—The Action Needed from the State—Summary of Benefits to be Derived from State Control of these Crimes.

DRUNKENNESS is not only one of the oldest crimes, but also the most universally prevalent, malignant, burdensome, and difficult of control of all that afflict society. It is sin, vice, and crime combined. As sin, it is classed under the moral law with idolatry, theft, adultery, and murder, whose penalty is spiritual death.¹ As a vice, it indurates the conscience, perverts the mental faculties, excites and inflames the animal instincts and passions, impairs and burns out the nervous system, weakens and vitiates the physique, corrupts the blood, and generates all kinds of depravity in the offspring.²

“It is a curse upon the community, for it is the starting-point of insanities, epilepsies, crime, and endless disease in

¹ 1 Corinthians, vi., 10; Galatians v., 21.

² *Cyclopedia of Social Reform*, p. 746.

posterity, while as to the individual, there is no other diseased condition known which so utterly and rapidly destroys all moral sense; unless it be epilepsy, to which it is naturally allied."¹

These are the scientific demonstrations of the medical profession.

As a social crime it has called for severe penalties. Under the Mosaic law the drunkard was stoned to death; the code of Draco punished drunkenness with death; Chinese emperors eleven centuries before Christ ordered all vines in the kingdom to be uprooted; as did also Lycurgus in Thrace. From the earliest times to the present, governments have struggled unavailingly, with various penalties and measures, to restrict drunkenness; yet Lord Bacon said in his time, "All the crimes on earth do not destroy so many of the human race nor alienate so much property as drunkenness." Sir Matthew Hale, Chief Justice of England, said, about one hundred years later,

"I have found that if the murders and manslaughters, the burglaries and robberies, the riots and tumults, the adulteries, fornications, rapes, and other outrages that have happened in that time [during the twenty years of his administration] were divided into five parts, four of them have been the issues and products of excessive drinking."

Two hundred years later, Dr. Elisha Harris of New York, in a monograph published in 1873, says: "Fully 85 per cent. of all convicts (in the State)

¹ Dr. Strahan, on "Marriage," p. 119.

give evidence of having in some larger degree been prepared or enticed to do criminal acts because of the physical and distracting effects produced upon the human organism by alcohol." These conclusions have been proclaimed by statesmen and sociologists with increased urgency during the last half of the nineteenth century in our own land. The wide diversity in the laws, and in the enforcement of them in different localities, has, however, hitherto prevented the collection and collation of statistics covering any long period of time, or extent of territory, as a positive scientific basis for social action. Nor can this be done for many years. We must therefore rely upon the general consensus of opinion, governed and guided by such absolute data as are obtainable.

In 1880 the Massachusetts Bureau of Statistics of Labor made an official examination in the nine criminal courts of Suffolk County, including the city of Boston, for one year, to ascertain the influence of intemperance in the commission of crimes not directly connected with the sale or use of liquor. It had been discovered from the statistics collected by the State for the preceding twenty years, that 60 per cent. of all the sentences for crime in the Commonwealth were for distinctively liquor offenses.¹ It was found that of the 16,897 total sentences in Suffolk County for the year 1880, 12,221 were for drunkenness, and 68 for illegal liquor keeping and selling. Thus only 4608, or 27 + per cent.,

¹ *Practical Sociology*, Carroll D. Wright, p. 355.

of all the sentences were for other crimes. It appeared from the careful examination of these cases as they were tried, that 2097 of the offenders were in liquor at the time of the commission of the offenses; 1918 were in liquor at the time of the formation of the intent; the intemperate habits of 1804 were such as to induce a moral condition favorable to crime; 821 were led to criminal action through the contagion of intemperance. Those sentenced for assault and battery (1498) and larceny (1115) constituted 56 + per cent. of the number investigated; of whom 1275, or 48 + per cent., were in liquor when committing the crime, or 27 + per cent. of the total examined. The 2097 in liquor at the time of committing the offense, equivalent to 12 + per cent. of all the offenders, added to the 12,289 sentenced for distinctive liquor crimes, makes the total crimes traced directly to liquor 14,386, or 85 + per cent. of all the crimes. It may be reasonably assumed that investigation along other lines would have traced a considerable proportion of the remaining 14 + per cent. to the effects of drunkenness.

By direction of the Legislature the same Bureau made a somewhat similar investigation of the convictions in the entire State of Massachusetts during 1895. The total number of sentences was 26,672, of which 66 per cent. were for drunkenness, and 2 + per cent. for drunkenness in connection with other crimes. In 8440 cases in which drunkenness did not form a part of the offense, 4582 of the of-

fenders were in liquor at the time of forming the intent to commit the crime. Thus 23,084, or 86.5 per cent. of the total, were directly traced to intemperance and the liquor traffic ; a somewhat larger percentage than that found in Suffolk County in 1880.

The State of Massachusetts and its county of Suffolk furnish the best example of wise laws faithfully enforced against drunkenness to be found in any country in the world. There is no reason to suppose that there is any more intemperance in that first-settled Puritan commonwealth, which has long been the mother of great men and the source of great principles and moral progress in America, than in other States of our country. We may fairly assume that the relation of drunkenness to crime which has been shown to exist in Massachusetts is maintained throughout the whole country. There was one arrest for drunkenness for every 23 of the population of Boston in that city in 1899. If similar laws had been similarly executed in all the 159 cities having over 25,000 inhabitants in the United States, there should have been, at this same ratio, 856,288 arrests for drunkenness in them during the year. Adding ten per cent. for the rest of the country, which is largely rural, there would have been 941,916 arrests for that crime alone in the United States in 1899.¹

The agreement of these figures with the estimates made by qualified experts in other times and

¹ See Appendix A for the actual conditions.

places, as well as with popular observation and opinion, confirms this deduction. These figures, however, do not include the indirect or secondary results of intemperance, the inherited criminality. Many have become criminals because of defect or disease derived from drunken ancestry. Marro rated over 40 per cent. of criminals as descended from drunken parents.¹ Drunkenness was clearly traced in the ancestry of 36.3 per cent. of the 9344 convicts who have been examined at the Elmira Reformatory.² Assuming that only 25 per cent. of the 3588 convicts in Massachusetts whose crimes were not directly traced to intemperance owed their criminality of character through heredity or youthful environment to drunken ancestry, it follows that 68 per cent. of all criminals sentenced for other offenses were the direct and indirect product of drunkenness; and formed 90 per cent. of the aggregate of criminality in the State. As drunkenness is largely ignored as a crime in other States and cities, it is probable that not more than 70 per cent. of the \$6.20 per capita of population cost of criminality in the United States should be, at present, charged to drunkenness. Even this amounts to the immense sum of \$420,000,000 per annum. Drunkenness is then the crime of first magnitude in its economic results, as well as in all other respects.

The apparent failure of the well enforced laws

¹ *The Criminal*, Drähms, p. 134.

² *Year Book for 1900*, p. 32.

of Massachusetts to suppress the crime of drunkenness must be attributed to the inefficacy of their penalties. They are framed upon the obsolete plan of punishment instead of upon the scientific principles of reformation. Sin, vice, and crime cannot be constrained by force. The evidence of all the ages has proved this. They must be conquered by curing their proximate cause, the disease of character which induces them. Fines, and short terms of confinement in comfortable quarters, with good food, under a doctor's care, merely afford opportunity to recover from the exhaustion of debauch, and to prepare for a renewal. They are no punishment to one who has become insensible to the misery which his drunkenness has brought upon his relatives and friends. Public care of this kind is just what the drunkard desires, and instances are not infrequent where the same drunkard has been arrested one hundred times or more.

Drunkenness is sometimes speciously pleaded by criminals in mitigation of other crimes, on the ostensible ground that it is a species of temporary insanity which implies irresponsibility. It should on the contrary be held by the court to aggravate the offense, inasmuch as the condition of insensibility to conscientious control has been often intentionally assumed in order to facilitate the perpetration of the crime, and it is well known to be a condition provoking and stimulating to crime. If not a component of the intention it was doubtless the inciting cause or favoring condition. In either

case it is an element of the other crime charged, and so adds to its gravity. Being, besides, a crime in itself, it doubles rather than diminishes the criminality of one who commits another crime under its sway. The penalty for a crime committed under the influence of liquor should therefore be more severe than when it is committed with sober senses. Drunkenness is both a contributory cause of crime and an indication of criminal depravity of character.

A very large proportion of the murders and atrocious crimes which shock society are perpetrated under the excitement of intoxication. Many of the so-called accidents with loss of life, much of the destruction of property by fires, explosions of boilers, negligence in handling machinery and in other duties, are to be charged against drunkenness. At least half the burden of insanity, idiocy, epilepsy, and inability for self-support is to be traced to intemperance. It is probable that more than half of all pauperism, and most of the wretchedness and sufferings of poverty are due to drunkenness directly or remotely.¹

Judge Edgar M. Warner, in his address entitled "The Sober Man's Burden," delivered before the National Prison Association Congress in 1899,² says :

"I hold that no man has a right, moral or legal, to get drunk ; whether he lives on the avenue and squanders his own or his relatives' money or whether he lives in the alley and

¹ *Prisoners and Paupers*, p. 147 ; *Practical Sociology*, Wright, p. 402.

² *Report of National Prison Association for 1899*, p. 45.

squanders his own or his relatives' money, he is a miserable criminal, and also what is sometimes worse, an unmitigated nuisance, and should be suppressed by law. . . . The State has no right to permit drunkards to exhibit themselves in public, or go at large in any place where people travel or congregate. . . . Is it not strange administration of criminal law to prosecute the same man two hundred times, or one hundred, or even twenty-five times for the same offense? . . . To confine a human being in a steel cage, 6 x 8, for thirty days, without exercise or occupation, is a crime against the human being. To permit a human being to live in a steel cage, 6 x 8, with good food and a fair allowance of tobacco, eating the bread of idleness, is a crime against the State. . . . In short he must be made to know and feel that a drunkard is not a weakling to be coddled, but is an intolerable criminal, an unmitigated nuisance and beast, to be abated at any cost, like the cholera, yellow fever, or smallpox."

While the tentative, desultory attempts which society has made in the past for the restriction and cure of drunkenness have failed to secure general social relief, they have at last so fully disclosed its pathology as to make it possible to formulate some general principles of treatment. *Incbrriety, or drunkenness, is a disease of both the physical and moral character, which yields to proper treatment as readily as do other similar diseases.* Fines and temporary imprisonment have as little effect upon it as they have on larceny or insanity. Its cure depends, like the cure of all criminality, upon reformation of the character, which requires time, proportioned to the peculiarities of the case; time to renew wasted tissue, to restore physical health, to readjust abnormal appetite and counterbalance

unnatural craving with healthy self-control, rational judgment, normal resistance, and firm will.

The report of the Advisory Committee on "The Penal Aspects of Drunkenness," appointed by the Mayor of Boston, of which Mr. Joseph G. Thorp, President of the Massachusetts Prison Association, was chairman, published by the city of Boston as "Document 158—1899," summarizes the latest conclusions of science upon this problem :

"The committee has made a careful study of existing conditions. They have examined all available official statistics and have supplemented these by statistical investigations of their own from official sources. They acknowledge with hearty thanks the generous co-operation of officials responsible for the administration of existing laws, judges, probation officers, police officials, and heads of penal institutions. They are indebted to the overseers of the poor and to representatives of the leading charitable organizations of Boston for valuable information and suggestions, and they are under obligations to leading medical authorities for much valuable expert advice. The committee has sought all available assistance from the experience of other States and countries. In a word, it has endeavored to take advantage of all accessible sources of information and suggestion. . . .

"It will be observed that the classes of offenders here considered are roughly divided into the following groups:

"First of all, the large class of accidental and of first offenders, who, under the present practice of the courts, are commonly discharged and, with occasional exceptions, obviously require only the exemplary warning furnished by arrest, a night in jail, and arraignment in court. For the exceptional cases referred to, probation or probationary fine may serve still further to reinforce the warning. This whole group, it will be remembered, constitutes more than fifty per

cent. of the total number of arrests for drunkenness in Suffolk County.

"Second, the smaller class of occasional offenders, presumably on the road to habitual inebriety, and calling for the most intelligent sympathy and treatment. It is here that the restraint, encouragement, and personal influence of probation, and, in rarer cases, of probationary fines, are most needed and most effective.

"Third, the still smaller, but more distinctly pathological, group of habitual and of periodical drunkards. Here the restraining influence of probation is obviously less likely to produce permanent results ; and it is this class which makes the strongest appeal for the more systematic and scientific rescue work of asylum treatment. Unhappily, at present, the frequent application of fines, and consequent short-term imprisonment to persons in this critical condition, only hastens the work of demoralization.

"Fourth, the smallest and most pathetic residual group of confirmed inebriates. For the small minority of young offenders belonging to this group every consideration of humanity urges the exhaustion of every deterrent influence and the most thorough asylum treatment before turning to the last resort of prolonged imprisonment. For the great majority of this group, including the rounders and incorrigibles who infest our public institutions, permanent detention under an indeterminate sentence, and under conditions which protect them and society from further degradation, is the only logical treatment.

"However reluctant public opinion may be to sanction such heroic treatment, it must not be forgotten that there is in every great community a residual group of incurables and incorrigibles calling for special and systematic treatment, in their own interest no less than in the interest of society. Individual welfare and social welfare, individual justice and social justice, unite in demanding that the unfortunate who has lost the power of self-control shall be protected against his own degrading weakness, and that society shall be relieved in part of

the danger and the contagion of his example, and the hereditary transmission of weakness to pauperized and degenerate children. Such ends a monastic regime of wholesome discipline, labor, recreation, and improvement can alone accomplish.

“Finally, it must be fully admitted that such a comparatively simple classification cannot pretend to be exhaustive. It is one of the complexities of the situation, calling for the largest exercise of wisdom by the courts, that in all these groups cases of drunkenness are not infrequently complicated by criminal conduct, so that they cannot be disposed of as simple cases of intoxication. Doubtless such complications in some measure account for seeming anomalies in the punishment of persons nominally under arrest for drunkenness. Moreover, in practice, these groups overlap, and not a few cases are so complicated and obscure as to defy accurate diagnosis and classification.”¹

Special asylums are needed in every State for the treatment, and laws for the confinement, of dipsomaniacs, or the subjects of alcoholism, which the medical profession regards as a “morbid condition resulting from the inordinate and persistent use of alcoholic beverages,” to which they can be committed under an indeterminate sentence until cured. This is a law of penological science. The relief of overcrowded station-houses and jails would render the construction of such asylums economically feasible. They could be made self-supporting from the labor of the inmates and the board of those able to pay. These asylums should be located near the centres of population, and have connected with them sufficient land to furnish most of the subsistence of the

¹ “The Penal Aspects of Drunkenness,” Professor Edward Cummings, *The Charities Review*, January, 1900.

inmates, and to provide them with outdoor labor. Other industrial occupations should be conducted to enable their inmates to maintain dependent relatives while undergoing treatment. License fees for liquor-selling should be devoted primarily to the maintenance of such asylums. The superintendents must be skilled medical specialists devoted to the study and cure of this terrible disease. The laws should require magistrates to fine every person arrested the first time for drunkenness, according to his ability to pay, measured by his weekly earnings or pecuniary resources, so that rich profligates will suffer an equal penalty with the poor, and reprimand him and place him in charge of a probation officer, to prevent repetition, and to work out his fine if it is not paid. A second offense should entail a warning and an increased fine, to be worked out, if necessary, under the probation officer or upon the public streets or works. Upon the third arrest, the drunkard should be sent to the inebriate asylum with all habitual drunkards, under an indeterminate sentence, to remain until cured. Discharge should be ordered by the superintendent, and should be upon a year's parole with monthly reports. Those who are able should be made to pay the cost of their cure.

The right and obligation of society to deal with drunkenness as a crime is incontestable. The same right and obligation exists concerning the treatment of the analogous female crime and vice of prostitution. Although the arrests for this crime are

for various reasons greatly fewer than those for drunkenness even in Suffolk County, Massachusetts, the prevalence of the crime in the denser communities of modern civilization is probably next in magnitude and in social damage to that of drunkenness; and the demands of the public for protection and relief from it are equally urgent.

Prostitution is a crime against the family, the very basis and corner-stone of society. The public prosperity depends upon constant growth in numbers; their good health, virility, productive energies, and security in the enjoyment of life. The supreme law of social self-preservation, indeed, requires that the regular natural forces of reproduction should always exceed the forces of deterioration, exhaustion, and death. That State which by ignorance or neglect permits social exhaustion to outrun reproduction, waste to devour renewal, is doomed inevitably to decadence. Next in power to the instinct of self-preservation nature constituted sexual desire, the instinct of reproduction. The perpetuation of the human race, the prosperity and happiness of society, depend chiefly upon the protection of marriage, and of the family, which is the social unit.

The history of the decline and extinction of the great civilizations of antiquity, the Phœnician, Assyrian, Persian, Egyptian, Grecian, and Roman, affords impressive examples of the natural result of general prostitution. Their dying legal struggle for self-preservation was compulsory marriage.

Prostitution permits the sexual instinct to be expended in impotent and fruitless indulgence, and thus defeats its natural object, which is offspring. It also causes and disseminates incurable venereal diseases, which may be communicated to pure wives by licentious husbands, and thus transmitted to innocent children. These diseases, moreover, are liable to be imparted by contagion, without sexual intercourse. Disease, deformity, criminality, weakness, and impotency are the inevitable inheritance of the offspring of male and female prostitutes. The natural penal reaction of this crime is more debasing and terrible in its conditions, more certain and quicker to exterminate its perpetrators than any other vicious practice. The offspring of prostitutes are only one eighth the number of those of married women. "One hundred prostitutes may be expected in their lives to give birth to sixty infants, one hundred married women to four hundred and eighty."¹ The average life of the prostitute is computed to be reduced to five years of prostitution.² Prostitutes tempt and corrupt boys at early ages. If they do not impart physical disease they stimulate inordinate indulgence of the sexual passion, which "grows with that it feeds upon" until it becomes a fruitful cause of rape, seduction, sodomy, self-abuse, adultery, and many other criminal vices. Excessive sexual desire and sensuality

¹ *Dictionnaire Sciences Medicales*.

² *Cyclopedia Social Reform*, p. 1129; *History of Prostitution*, Dr. Sanger, p. 485.

are almost universal characteristics of criminals, who are frightfully addicted to solitary vices which often reduce them to semi-idocy during imprisonment. The maintaining of the business of prostitution creates a constant demand for fresh young girls, which its agents are everywhere exercising fiendish ingenuity to supply. It is estimated that every prostitute woman requires five prostitute men for her support. Briefly, prostitution prevents marriage, invites violation of marriage vows, impairs the sanctity and fertility of marriage, corrupts the blood, causes impotency and degeneration, disseminates horrible diseases among the pure and innocent, restricts and depraves maternity, reduces the birth rate, debases and ruins boys and girls, and attacks the vitals of society from all sides.

Mulhall gives for 1898 the number of prostitutes in London as 31,800, or 8.3 per 1000 inhabitants; in Paris, 12.2 per 1000; Lyons, 14.5; Marseilles, 11.2; Bordeaux, 12.5, and Berlin, 24.8 per 1000 inhabitants. The number in New York was estimated to be 40,000 in 1896, and in 1899 was 18.6 to the 1000 inhabitants.¹ M. Lecour, head of the Police des Mœurs of Paris, says: "Sanitary statistics prove that prostitution is increasing, and that it is becoming more dangerous to the public health."² The birth rate in France has declined from 26.3 in 1865 to 21.8 in 1890, the death rate then being 22.6 per 1000. In 1897 the birth rate

¹ *Cyclopedia of Social Reform*, p. 1127; *History of Prostitution*, Dr. Sanger, p. 678.

² *Cyclopedia of Social Reform*, p. 1131.

was 22.4, the death rate, 19.9 per 1000, but for the last twenty years the diminution in the number of births has been almost constant, while the number of divorces has increased rapidly, from 5752 in 1891 to 7460 in 1897.¹ Social waste is there out-running reproduction. It is the opinion of medical practitioners qualified to judge that prostitution and syphilitic diseases are increasing in America.²

It is manifest from this statement of the facts that *the suppression of prostitution is also a supreme duty of government*. It is a plague more dangerous and serious than the cholera or yellow fever. Experience has demonstrated, both abroad and at home, that it cannot be suppressed or corrected by license or legal regulation. The law, then, must brand prostitution as a crime, and lay hands on and arrest all prostitutes. Prostitutes must be treated as criminals, affected with the disease of moral depravity, like drunkards. This will multiply arrests almost in the ratio of the arrests for drunkenness in Massachusetts, and make the disposition of those arrested a very important question. Penological science makes the same answer to this question as it does concerning drunkards and all criminals: seclusion for the purpose of cure; and permanent confinement of the incurable under the indeterminate sentence. Special hospitals, or reformatories, are required under the care of skilled specialists, adapted to the necessities of

¹ *Statesmen's Year Book*, 1899.

² *History of Prostitution*, Dr. Sanger, p. 690.

maternity and infants, as well as of childless prostitutes, from which the reformed may be returned to social life and the incorrigible graduated into penitentiaries. Freedom under a probation officer for those first arrested is inapplicable to prostitutes, because prostitution indicates confirmed and chronic moral depravity, requiring long-continued treatment, like habitual inebriety. The peculiarities of feminine character, however, increase the prospect of reformation far beyond the ratio of male delinquents, and encourage philanthropic effort for their own sake, as well as for social protection.

The record of failure in the social contest with these two cardinal crimes from the beginning of history; the constant natural tendency of humanity to give license to appetite and desire; the inefficacy of strenuous reform; the powerful combination of the great wealth acquired by pandering to them which exists for their protection and propagation; the imperative duty of the social organization to guard and promote the welfare and morality of its individual components, all reinforce the demand of science that the State shall everywhere stigmatize these vices as heinous crimes in themselves; that the State shall deal with those who perpetrate them just as intelligent Penology requires that all the other criminals shall be dealt with, for their own reformation, and the protection of the public. The State is the only power capable of conquering in this contest. The universal

branding of drunkenness and prostitution as crimes under the ban of the law will, of itself, act upon the mass of the people as a great deterrence. When the supreme power of the State is thus exerted to repress and reform, society will have secured its best safeguard from them.

CHAPTER XI.

THE CRIMINAL INSANE AND INSANE CONVICTS.

Effect of the Discoveries of Medical Science on Criminal Culpability—Varieties of Insanity—Plea of Insanity in Criminal Trials—Irresponsibility of the Insane—The Criminal Insane—Their Crimes—Professional Scientific Alienists—Doctrine of Irresponsibility more Effective Protection than Dogma of Punishment—Idiots—Epileptics—First Recognition of Doctrine of Irresponsibility—Second Step—German Code—French Penal Code, and American Practice—Résumé of Legal Precedents—Present Legal Status not Good Law—Expert Should Appear for the State—Question of Insanity One of Fact, Requiring Judicial Decision by an Expert—Expert Professional Alienists Needed—Insane Criminals to be Removed from Prisons—Feigned Insanity—State Commission of Alienists—State Hospitals for Insane Criminals—Separate from Prisons—And from General Hospitals for the Insane—Where now Established—Expiration of Sentence of the Insane—When Cured Previous to Expiration of Sentence—Disposition of the Insane under Sentence of Death—Of All Others when Cured—Disposition of Cured Life-term Prisoners.

MEDICAL science has revolutionized the social conception of the nature of insanity and its treatment within the last twenty-five years. It is no longer considered, in civilized countries, a diabolical possession, but is known to be a cerebral disease. Instead of punishments, dungeons, chains, straight-jackets, and all manner of physical restraints, have been substituted medical therapeutics, tender care, and the greatest comfort and freedom consistent with the safety of the patient

and of the public. This change has greatly affected criminal jurisprudence. The question of personal responsibility for criminal action has assumed new and practicably soluble phases. The laws absolve insane and idiotic persons from guilt for crime. But as all crime has come to be held an aberration from normal healthy action, the difficulties of determining the just division line between an abnormality of action which is culpable, and one which has no moral responsibility, are multiplied in various directions. It is now generally admitted that not only the crimes committed by the manifestly insane, but also many of those which have heretofore been severely punished under the laws, were acts caused by mental and moral disease, instead of wilful depravity, which rendered the perpetrator incapable of self-control. This is especially remarkable in crimes of violence, homicides, assaults with intent to kill, and other shocking atrocities, perpetrated by persons not previously recognized as insane. Twenty-three per cent. of all the life convicts in the prisons of New York are now in the Matteawan Hospital for insane criminals.¹

The well defined species of insanity named *paranoia* is diagnosed by prevalent delusions on particular subjects, while the general functions are rational. These delusions are frequently of persecutions, attempts to poison or otherwise to injure the patient, hallucinations of voices in the air urging to irrational acts, which irresistibly impel to sudden

¹ Dr. W. E. Allison, *Report of National Prison Association*, 1898, p. 333.

violent crimes in imaginary self-defense. Other criminal phases of insanity have been specialized as homicidal and suicidal mania, pyromania, kleptomania, dipsomania, sexual mania, in which the patient is uncontrollably insane only upon one subject. There is also an insane neurosis, and an epileptic neurosis, both conducing to uncontrollable convulsive action, mental, moral, and physical. Where the convulsion results in a crime the perpetrator ought not to be held any more responsible than when it results in an injury to himself. Moral imbecility is now known to be as distinct and prevalent a disease as mental imbecility ; and graded, like the mental, from idiocy upward. It is not possible for judge or jury to decide at what point in the scale responsibility begins, without the evidence of an expert alienist. It is probable that Professor Ferri's category of criminal madmen is actually a much larger proportion of the criminal class under the latest diagnosis of science than the five to ten per cent. assigned to it by him. A portion of the "instinctive" and "habitual" criminal category should be added to it.

These discoveries have caused the plea of insanity in the defense of criminals to be more commonly urged, and more readily admitted by the courts than formerly. This plea is, however, much abused in the escape of the guilty, not only from conviction but also from confinement in the humanely managed asylums, to which they have been committed as insane patients, and where they have

been allowed the privileges and freedom of modern asylum treatment. Such abuses have so discredited the plea in the popular estimation, that it is quite generally regarded with suspicion when offered. It is popularly considered the last resort of a baffled and desperate defense.

“ This mistrust will become less prevalent as the knowledge of the medical profession regarding the various forms of mental disease grows more exact and fixed, to the exclusion of those ephemeral and transitory manias, always of doubtful existence and now happily becoming, like other exploded notions, simply historical incidents of the past.”¹

As all criminality of character has been scientifically demonstrated to be an abnormality or disease, one phase of which is cerebral disease or insanity, there should be on the contrary a presumption of insanity, like the presumption of innocence, in favor of every prisoner charged with crime; which should oblige the prosecution to establish the fact of sanity and responsibility in questionable cases, as well as that of guilt, before sentence is pronounced. As soon as guilt is proved the presumptions of innocence and sanity are both destroyed.

The newly established intimacy of the relations between insanity and criminality, and the consequent development of the question of personal responsibility, have devolved upon society and the

¹ Dr. H. E. Allison, “Insanity and Homicides,” *American Medical-Psychological Association*, 1898.

courts of justice a new and grave duty. A criminal who is insane is much more dreaded and dangerous at large than a sane one. The decision of the question of sanity is therefore more important to society, as well as the prisoner, than that of the question of guilt of the crime charged. The criminal court has become, by the supreme law of science and the logic of necessity, a primary commission *de lunatico* concerning every prisoner brought before it. Its functions have been elevated above the mere decision concerning the simple fact of the guilt or innocence of the accused, and the imposition of a legally prescribed sentence upon the guilty, to the supreme function of determining the moral responsibility of an individual for his criminal acts; to the decision whether he shall be condemned to a limited confinement for a crime as a punishment, or deprived indefinitely of his liberty and civil rights by an indeterminate sentence to an insane asylum. For the sentence for insanity is of necessity indeterminate, limited only by the cure of the insanity. This has materially increased the importance and dignity of criminal procedure. The determination whether cerebral disease exists in a degree which constitutes irresponsibility is difficult under ordinary circumstances, but in the case of a prisoner accused of a crime it is usually complicated, either by the disposition of the prisoner to feign insanity in order to escape a heavy penalty, or by his efforts to conceal it when on trial for a minor offense, in order

to obtain a short sentence under the criminal code, instead of a commitment to an insane asylum.

The criminally insane do not ordinarily differ in appearance so much as ordinary criminals from the normal type of man. Their stature, development, cranial configuration, physiognomy, and physical characteristics place them in a higher class. Their intellectual capacities, education, habits of thought and life are such as might be expected in persons of similar stations in life. They may converse rationally and intelligently upon all subjects except one. Until this is discovered the crime appears to be the only link of connection with the criminal class. Their crimes, however, are usually crimes of personal violence, often of a peculiarly atrocious and shocking kind. A large proportion of the murders, regicides, homicides, assaults to kill, arson, and malicious destructions of property, and of what are termed unnatural crimes, result from the insanity of the perpetrators. There were $2\frac{2}{3}$ times as many inmates in the New York State Matteawan Hospital for Insane Criminals committed from the courts, accused of "murder, manslaughter, etc.," and $2\frac{1}{3}$ times as many accused of "assault to harm," in 1896, as convicts transferred from penal institutions after conviction for their crimes.¹ From these crimes society demands protection first of all, and next from the dangers of all kinds to which it is exposed from irresponsible

¹ Dr. H. E. Allison, Medical Superintendent, *Journal American Medical Association*, September 19, 1896.

cranks. These are often arrested, convicted, briefly confined for minor offenses, and then turned loose again to commit whatever outrage a disordered imagination suggests. The International Prison Congress in Paris, 1895, recognized the gravity of these dangers, and recommended a combination of judicial and medical authority in criminal courts.

The necessity of expert knowledge, examination, and evidence for the determination of the question of sanity and responsibility for crime, has in recent years created a demand for professional scientific alienists. This has developed a class of skilled scientists qualified to satisfy these social requirements. It has also greatly enlarged medical knowledge of mental disease. Professional ability has advanced proportionately with the demands upon it.

Scientific Penology at the beginning of the twentieth century, then, demands *that the law shall enforce an examination by an expert alienist, of every prisoner accused of crime whose record, appearance, or offense indicates a possibility of mental aberration, or who pleads insanity in defense*; and that all who are judged from such examination irresponsible or mentally diseased, shall be committed under an indeterminate sentence to a special hospital for the criminal insane. Such a sentence should condone the offense and dismiss the criminal charge. The prisoner should be adjudged dangerous to society so long as insanity continues, but irresponsible for the crime of which he is accused, even though it were committed by him. The

doctrine of irresponsibility thus becomes a more efficient protection of society than the dogma of punishment. Under the operation of natural law the criminally insane reaps the consequences of his acts in prolonged confinement in an asylum, but not as a penalty under human law, for the violation of which he was not responsible. As the province of criminal law has come to be restricted more and more exclusively to the single purpose of social protection, and the duty, right, and ability of human law to inflict punishment as a vengeance, retribution, or compensation for crime has been abrogated by experience and rejected by a more intelligent comprehension of the proper function of human laws, the only social utility which the punishment of crime retains is deterrence and the confinement of the criminal. Both of these are more efficiently secured by recognizing the irresponsibility of both the criminally and the insantly diseased (which naturally and manifestly requires their secure confinement until cured of their dangerous propensities), than by any effort to correct these propensities by punishment. The experience of ages has proved beyond question that neither immorality, criminality, or insanity can be cured by flagellation or any other punishment. They are all symptoms of an abnormal diathesis which of necessity functions erroneously. Either the abnormality which causes the symptom must be cured while the case is confined, as in other dangerously diseased persons, or the confinement must be continued

indefinitely. The symptom is presumptive evidence of the disease. When it appears, the doctor is first needed, not the judge. The only useful diagnosis is that made by the expert physician. It is his judgment, and not that of the lawyer, which must prescribe.

Idiots are justly held irresponsible, but science has proved that idiocy grades upward into imbecility, that imbecility varies by degrees upward until it disappears. Somewhere along the ascent in the scale the individual attains such control over his actions as constitutes a legal responsibility for crime. So also moral idiocy has been discerned, grading upward through imbecility to such a sense of right and wrong as shall control action. Where any particular subject stands among these degrees, whether he is above or below the line of legal responsibility it is the province and duty of the alienist to decide.

Epileptics are known to be subject to criminal spasms just before and after the time of their epileptic attacks, of which they are afterward entirely oblivious, and for which they cannot be held responsible, however atrocious the crime may have been. There are others often brought before criminal courts who are just as irresponsible for their actions on account of cerebral deformities or diseases, who should be confined to the hospital for the insane, and not the prison. No one but a skilled alienist is qualified to decide these things.

Criminal law has not yet reached this stage of

development, even in respect to insanity, but it has been very slowly approaching it by progressive steps. When irresponsibility was first recognized as a defense in criminal trials, it was restricted to total insanity and idiocy. Thus in the trial of Arnold, an undoubted lunatic, for shooting at Lord Onslow in 1723, Mr. Justice Tracy said :

“ . . . it is not every kind of frantic humor, or something unaccountable in a man's actions, that points him out to be such a madman as is exempted from punishment ; it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute or a wild beast ; such a one is never the object of punishment.”

This law of regulating responsibility, which has been termed the “ wild beast ” law, governed English procedure until 1812, when Chief-Justice Marshall enlarged the limits of irresponsibility to include cases of partial insanity incapable of distinguishing right from wrong. He said,

“ upon the authority of the first sages in the country and upon the authority of the established law in all times which has never been questioned, that although a man might be incapable of conducting his own affairs, he may still be answerable for his criminal acts, if he possesses a mind capable of distinguishing right from wrong.”

The next advance was not made until 1843, when in response to a demand upon them by the House of Lords for an authoritative exposition of the law for the future guidance of courts, the judges laid

down a rule limiting the knowledge test to the particular act and time when it was committed, as stated by Dr. Maudsley in these words :

“To establish a defense on the ground of insanity, it must be clearly proved that at the time of committing the act the party accused was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.”

That is, the question was not of the insanity of the accused, but whether he was sane enough to know that he was doing wrong when he committed the act. Dr. Maudsley says of this rule : “Were the issue to be decided by tossing up a shilling, instead of by the grave procedure of a trial in court, it could hardly be more uncertain.”¹

The German penal code is somewhat similar in restricting the exemption to such a disease of the mind at the time of the act as excluded a free determination of the will, in these words :

“An act is not punishable when the person at the time of doing it was in a state of unconsciousness or of disease of mind, by which a free determination of the will was excluded.”

The article of the French penal code is : “There can be no crime nor offense if the accused was in a state of madness at the time of the act.” The penal code of the State of New York provides that responsibility is to be presumed (sec. 17.) and the burden of disproving it is upon the accused. Judge

¹ Maudsley on *Responsibility in Mental Diseases*, chapter iv.

Doe, of the New Hampshire court, in the case of *State v. Pike*¹ says, "The legal principle, however much it may formerly have been obscured by pathological darkness and confusion, is that a product of mental disease is not a contract, a will, or a crime." Chief-Justice Perley charged the jury in this case to return a verdict of not guilty,

"if the killing was the offspring of mental disease in the defendant; that neither delusion nor knowledge of right and wrong, nor design or cunning in planning and executing the killing and in escaping or avoiding detection, nor ability to recognize acquaintance or to labor or transact business or manage affairs, is, as a matter of law, a test of mental disease; but that all symptoms and all tests of mental disease are purely matters of fact to be determined by the jury."²

The ripest fruit of the judicial wisdom of the ages, then, consigns the diagnosis of the most abstruse and deceptive disease of humanity to the ordinary jury of twelve men of the vicinage, who are not intimate enough with the accused to have formed an opinion concerning his guilt or innocence of a crime. It relies upon a verdict of the common-sense of a jury to decide upon the existence of a condition, the essence of which is lack of sense, and the symptoms of which are contrary to all the experiences of common-sense. If good law is, as has been said, common-sense enacted, this is no longer

¹ 49 New Hampshire Reports, p. 399.

² A concise résumé of the present state of legal procedure in cases where insanity is the plea of the defense in criminal trials is to be found in the United States Commissioner's Report on the Criminal Insane in the United States and Foreign Countries, 1898.

good law, for it is no longer the common-sense of intelligent action concerning even the ordinary diseases which attack mankind. When a person shows symptoms of being sick, or diseased, a doctor is called to decide what is the matter with him, and to prescribe the treatment. When mental disease is made a defense against a charge of criminality the examination and evidence of expert alienists should be required by the State to decide the facts, and make the proofs with authority to the jury.

The expert should be called by the State ; to act in an impartial, judicial state of mind, and not to search for reasons or arguments to sustain the position of either the prosecution or defense. Experience with expert evidence has produced the conclusion that it may be procured to support or contest either side of almost every case. It would seem that the facts will be best discerned and made known by the employment by the State of an alienist of acknowledged ability and experience, whose decisions shall be accepted as decisive by both prosecution and defense, and so the confusion from a conflict of expert testimony avoided. If the accused is thus pronounced mentally diseased at the time of the trial, the positive conclusions of science and the demands of justice require that the judge shall decide him to be irresponsible for the criminal deed, but dangerous to be at large, and therefore commit him to a hospital for the criminal insane until cured. " It should be judicial authority, based upon expert medical advice, that

orders commitment to a special asylum.”¹ As Judge Doe says :

“ That cannot be a fact in law which is not a fact in science; that cannot be health in law which is disease in fact. And it is unfortunate that courts should maintain a contest with science and the laws of nature upon a question of fact which is within the province of science and outside the domain of law.”²

The question of fact, which only the special science of the professional alienist can determine concerning the person accused of crime, is, whether the individual is so diseased or abnormal in brain or nervous constitution as to be liable to commit crime. If so, the accused is dangerous to society, and should be confined. This question of fact is determined according to the laws of mental aberration with which the alienist is familiar, just as the pertinence of other facts in the case are determined by the laws of judicial procedure by the law judge. The protection of society and of the accused both require, in all criminal cases of doubtful sanity, a judicial expert on the bench to expound the laws of insanity and decide with authority in the case. Practice in Pennsylvania has nearly reached this plane. A clear, comprehensive, and exhaustive discussion of this subject was delivered by Judge Gustav A. Endlich in a paper on the “ Proposed Change in the Law of Expert Testimony,” read before the Pennsylvania Bar Association in 1898, in which he says :

¹ *The Criminal Insane*, S. J. Barrows, p. 13.

² *Boardman v. Woodman*, 49 New Hampshire, p. 150.

. "There can be hardly any doubt that the power to associate with themselves as assessors experts whose office it shall be to advise upon matters scientific, technical, etc., resides in judges even without legislation. In this State it is implicitly recognized as so existing by the equity rules promulgated by the supreme court in 1894."

Justice, the safety of society, economy of time and costs, would undoubtedly be greatly subserved by the appointment of an expert alienist in every judicial district to serve upon a fixed salary, and act judicially in all cases of suspected or alleged mental disease.

The humane and therapeutic principles which now regulate the public treatment of the insane require the removal of convicts who are discovered to be insane while undergoing imprisonment for crime from the rigors and discipline of the prison to a hospital for the insane. It is generally considered irrational and barbarously cruel for society to persist in the punishment of one who is incapable of understanding the reasons for his restraint. Science and experience have demonstrated that continued confinement in prisons is likely to transform a limited-term sentence of such cases into a death penalty, and that humane treatment and recovery are both practically impossible in prison.

"There is in every penal institution a certain proportion of inmates who are epileptics, paranoiacs, imbeciles, or who are unquestionably suffering from various other forms of mental disease, such as acute or chronic mania, melancholia, paresis, and the various forms of dementia. These cases are too often

unrecognized. They constitute, in the aggregate, a class of numerous individuals who are dangerous in their proclivities, who are not amenable to ordinary methods of discipline, and who are unsafe to be at large. Wherever they may be, they are a threatening and disturbing element. Such persons should all be removed from the custody of the prisons, and if possible, placed in special institutions erected for them.”¹

When prison officials discover indications of insanity in a prisoner, it is their duty to notify the committing magistrate, who should immediately order an examination by the official alienist. If he reports the prisoner insane, the magistrate should order the transfer of the prisoner to an insane hospital for criminals.

It is a common thing for criminals serving long-time sentences to feign insanity in order to secure, by their removal to a hospital, greater comfort, liberty, and opportunity for escape. They are often so skilful in their simulations as to successfully deceive all with whom they come in contact, sometimes even expert alienists. The professional alienist, however, is the only capable authority for deciding the question of mental disease. When a prisoner, then, shows indications of insanity, it is the duty of the warden to summon the alienist, make known to him all he knows concerning the prisoner which may have a bearing upon the diagnosis, give him all the time he desires for examination, and then accept his decision as conclusive. If the convict is pronounced insane, or mentally

¹ Dr. W. E. Allison, *Report of National Prison Association*, 1898, p. 329.

diseased, he should be immediately transferred to the hospital for the insane criminal.

“In all penal institutions the physician should be required by law to examine thoroughly into the mental and physical characteristics of every inmate coming under his charge, with a view to determining the best possible disposition of such an individual.”¹

In cases of doubtful insanity the decision should be left to the expert of the State.

The importance of an expert professional diagnosis by an authority recognized by the State, in cases of alleged insanity in criminal trials, and of convicts serving time in prison, indicates the necessity of a legal provision for the appointment of learned and skilful medical officers to perform this duty. Such officers should have sufficient skill and reputation to merit the confidence both of the public and of the patient. The public would depend upon the accuracy of their decision for protection against the insane violence of liberated lunatics, and the patient would depend upon it for proper hospital treatment, if really insane, which might possibly involve the prolongation of his confinement for life. Another grave function which would devolve upon such an officer is the determination of the question of the release of a convict who is apparently insane at the expiration of his sentence. These three classes of questions are each of them questions concerning the existence of disease, and its gravity and nature ; whether it makes the subject

¹ Dr. W. E. Allison, *Report of National Prison Association*, 1898, p. 331.

dangerous to himself or the public if free from restraint, or whether he is responsible for his acts. These are the paramount social questions in each case, and they can be safely intrusted only to the decision of a skilled and responsible medical official.

The present state of both medical and penological science requires *the legal appointment of competent official alienists having authority to decide all questions concerning the insanity of persons accused or convicted of crime.*

They also require *the establishment of special hospitals for the confinement of the criminal insane and insane convicts, apart both from the prison, and from general hospitals for the insane.*

These hospitals should not be connected with prisons, because they are not in any sense penal institutions. Their inmates are not confined in them for punitive purposes but for curative. Their management should not be disciplinary, like that of prisons, but solely custodial and therapeutic, like that of the insane hospital. "The epileptic, feeble-minded, and insane are not amenable to ordinary penal discipline and should be removed therefrom."¹ The prison warden is not ordinarily qualified by education for the superintendence of such an institution. The regulations and conduct of prisons are unfit and inapplicable to hospitals. The only valid arguments urged in favor of their connection with prisons are the assurance which prison guards give of a maximum of security, and the economy

¹ Dr. W. E. Allison, *Report of National Prison Association*, 1898, p. 332.

of a single superintendence. But equal security can be assured in a properly constituted and managed hospital for insane criminals. Such a hospital should be under a medical alienist as superintendent, with a medical staff and trained attendants, not keepers accustomed to use force in restraint instead of that system of kindness which has of late years transformed insane asylums into true hospitals. True social economy will be best secured by obedience to the laws of science and the humane dictates of reason ; by depending upon the restoration and cure of the diseased under skilled treatment to reduce the public cost of maintenance, instead of continuing to defray these for life under prison management.

Nor should such institutions be connected with general hospitals for the insane, whose patients are from all ranks of society. The honest, respectable, cultivated, and intelligent inmates, and their relations and friends, would strenuously object to the compulsory association with convicts and the criminally disposed. Many would refuse to expose their relatives to such associations, retaining them at liberty to the public peril and defeating to this extent the purpose of these institutions. It is certainly an unjustifiable outrage to condemn the afflicted, who are incapable of exerting or defending their personal rights under the law ; who, though suffering from a most grievous and terrible malady, have committed no transgression and done no harm, to the same place of confinement with the vicious,

depraved, criminally disposed, and violent. The presence of the criminal insane and convicts among the patients in a general hospital seriously interferes with and retards the recovery of the other inmates. It disturbs the tranquillity of the institution, introduces germs of mental and moral corruption, and compels an otherwise unnecessary rigor of discipline over all to prevent the escape of the dangerous criminals. Thus it impairs the utility of the hospital. "The criminal insane, moreover, suffer from the chronic and sub-acute forms of disease which are not amenable, in the majority of cases, to cure."¹ The large majority of the criminal insane and insane convicts will be inmates for life, and require chiefly humane custody, which can be much more economically provided in hospitals especially adapted to their peculiar needs.

The States of New York, Massachusetts, Illinois, and Michigan have already provided special hospitals for their criminal insane ; four other States have departments for the insane in connection with their prisons. There are special hospitals for criminal insane in Ontario, England, Scotland, Ireland, Saxony, Baden, Hungary, Belgium, and Norway. In Italy there are three ; and other domestic and foreign states have projected them. Prisoners in penal or reformatory institutions who give indications of insanity about the time of the expiration of their sentence should be reported to the court which sentenced them, and held until orders are received from

¹ Dr. W. E. Allison, *Report of National Prison Association*, 1898, p. 330.

it for their disposition. The magistrate receiving the report should order an immediate examination by the official expert, and if the prisoner is pronounced insane by him, he should order his committal to the hospital for the criminal insane until cured, when he should be discharged by the superintendent.

Inmates of hospitals for the insane who have been received from penal or reformatory prisons, and who are pronounced cured by the superintendent in charge before the expiration of the sentence under which they were originally committed to prison, should be returned to the prison from which they came, to serve the remainder of their sentence. Time spent in hospital should count as time spent in prison, and such is the almost universal practice.

Prisoners under sentence of death who become insane before execution should be transferred to the hospital for insane criminals by order of the judge who sentenced them, and stay of execution granted until they are cured. It is revolting to execute an insane person.

Inmates of hospitals for the insane who have been accused of crimes of violence and atrocity, the legal penalty for which is death or life imprisonment, should not be released by the superintendent when he adjudges them cured, but the official expert should examine them and report to the governor, who may discharge them, if he considers it safe to do so, or remand them to execution, or prison, at his discretion.

All other inmates should be discharged by the superintendent when cured, and it is safe for the public to have them at liberty. Each case should be carefully and exhaustively tested for the completeness and permanence of the cure, and the possible danger to society of the release. The safety of society should control the release in every case. So, if doubt exists concerning this, the confinement should continue. Many terrible crimes have been committed by prisoners released as cured from hospitals for the insane.

CHAPTER XII.

THE INSTINCTIVE AND HABITUAL CRIMINAL.

Proportion of Recidivists—The most Dangerous and least Controlled Category—The Reprobates—The Instinctive Criminal easily Identified—How to be Disposed of—The Habitual Offender—Proportion of—An Anomaly of Criminal Jurisprudence—Generally a Non-Resident—Necessity of Bertillon Identification—Product of Social Neglect—Society's Duty to the Discharged Prisoner—The Discharge on Parole.

DR. DRÄHMS estimates that instinctive criminals constitute about ten per cent., and habitual criminals from twenty-five to thirty per cent., both together making about forty per cent. of all legal offenders.¹ Professor Ferri estimated these categories to comprise from forty to fifty per cent. of the criminals in confinement. Sixty-six per cent. of those committed to the Massachusetts State prison during the year ending September 30 1899, had been imprisoned before, that is they were recidivists.² The recidivistic population of all our penal institutions seems, from the imperfect data obtainable, to be constantly increasing. This is an indication both that the present penal codes fail to suppress crime, and that a large proportion of the crimes committed is to be charged against the pro-

¹ *The Criminal*, p. 194.

² *Report Commissioners of Prisons*, pp. 14-17.

fessional, or as we designate him in our categories, the "instinctive and habitual criminal." As the professional criminal is more expert in perpetrating and concealing crime, and in escaping punishment, the amount of crime due to this category is undoubtedly a much larger proportion of the whole than the imprisoned recidivists are of the total number of prisoners in confinement.

One of its distinguishing characteristics is a criminal vanity, and an ambition to become notorious. The crimes which it commits are therefore those planned with cunning, executed with premeditated care, with daring, and often with much labor. The instinctive criminals commit most of the great crimes which shock, terrify, and afflict the public: the assassinations of rulers and great men; the great thefts, robberies, burglaries, and destruction of property. They are the anti-social, anarchistic hostiles of civilization, the survivors or atavistic remnants of savagery. The crimes of this category are of greater magnitude, as well as more numerous, than those of the rest of the criminal class. Moreover, the descendants of the instinctive and habitual criminals are destined to succeed their parents in the criminal trade. The law of heredity forces them into opposition to restraint; into hostility to order, and violation of law. This is the category which, in freedom, is continually reproducing and replenishing the criminal class. So long as it is unconfined there will always be several growing up to supply the place of every one arrested. Repression

and control of instinctive and habitual criminals, therefore, are serious duties. Considering the relentless hostility and ceaseless depredations of this large portion of the criminal class, together with the fact that it is the most readily and certainly identified of all, it is surprising that society has never yet adopted any rational plan for its extermination. It has relied for ages upon the futile principle of the *lex talionis* for protection, upon the dogma of punishment, with an ignorant superstition which seems incredible in view of the constant failure of these measures to accomplish their object.

This is the category of the reprobates whom St. Paul described in the first century of the Christian era as,

“being filled with all unrighteousness, fornication, wickedness, covetousness, maliciousness, full of envy, murder, debate, deceit, malignity; whisperers, backbiters, haters of God, despiteful, proud, boasters, inventors of evil things, disobedient to parents, without understanding, covenant-breakers, without natural affection, implacable, unmerciful; who, knowing the judgment of God, that they which commit such things are worthy of death, not only do the same, but have pleasure in them that do them.”¹

This category has perpetuated its identity through all the generations of two thousand years, and will distress mankind for two thousand years to come unless the methods of dealing with it are changed.

When the instinctive criminal is brought before the court for trial, in ninety-nine cases out of a

¹ Epistle to the Romans, chapter i., 29-32.

hundred his very physiognomy betrays him. His deformed physical development, projecting facial eminences, heavy jaws, square, projecting chin, large cheek bones, projecting ears, thick hair, thin beard, a symmetry of features, furtive, feline glance of the eye, cringing manner of movement, and other well marked stigmata make it evident that he is not as other men, even though no one particular characteristic can be positively relied upon to establish his caste. The instinctive criminal is the same in general appearance the world over, of whatever race or people he may be. The experienced judge will identify him ordinarily at a glance, before any evidence is produced, as a partially civilized specimen of his kind. If he does not, an examination of his physiological and psychological characteristics will easily determine the case. Dr. Drähms specifies moral insensibility as a universal symptom of criminality; cruelty, lack of remorse, lack of foresight, mental and emotional instability, subjection to "nerve storms," fidelity to "pals," untruthfulness, vanity, pride of caste, use of slang and tattooing, insensibility to physical pain, drunkenness and other vices, are almost universal with instinctive criminals. Some of them will be manifestly incapable of honest self-support on account of physical degeneracy; others from mental degeneracy, imbecility, partial insanity, and neurotic diseases, like epilepsy. "Crime is a sort of outlet in which the unsound tendencies of the neurotic are discharged; they would go mad if they were not

criminals, and they do not go mad because they are criminals.”¹ In all of these the criminal psychosis, like the neurosis of which it is the mental example, is irresponsive to punishment as a cure. Habitual drunkenness and prostitution are likewise often the results of instinctive criminality or depravity. The instinctive criminal is a criminal by nature, unchanged by environment or training, as prone to do evil as to breathe. It is a manifest travesty of justice and the dignity of judicial procedure to sentence any instinctive criminal to a brief, or to any limited, term of imprisonment ; whether the crime for which he was arraigned be trivial or pernicious, whether the criminal be morally responsible or irresponsible. Society can only be relieved from the plague of him by his cure or continual confinement. As soon as he is freed uncured he will return to his criminality, by the compulsion of his nature. His nature is such that it cannot be controlled by external influences or laws, or the internal reason or will which he has. He is in most instances, doubtless, as morally and socially irresponsible for his actions as the manifestly insane. Science, however, is less able to draw the line which separates the responsibility from the irresponsibility of instinctive criminality than of insanity. Even the question of guilt is secondary in importance in prosecutions for crime to the question of criminality of character. If an instinctive criminal is convicted of a crime which warrants a life sentence, he should certainly be sent

¹ Maudsley, *Responsibility in Mental Diseases*, p. 34.

to the penitentiary for life ; but for all other crimes or misdemeanors which may enable the law to lay hold of him, however trivial, he should be consigned to the reformatory until cured, or transferred as incurable to the penitentiary, for the permanent protection of society and the prevention of the reproduction of his species. Neither justice, mercy, nor common-sense are subserved by any other course with him. This breed must be exterminated with relentless vigor. The marriages of all criminals should be prohibited, but the utmost vigilance should be exercised to prevent the marriage of the instinctive.

The "habitual offender" may or may not be an instinctive criminal. Those who are not, are the product of environment. With a comprehensive treatment of criminality, the habitual offender should not be so difficult of identification, or so long suffered as the instinctive criminal. Indeed there need not and should not be any such class, or individuals. Yet under existing systems of Penology the habitual criminal represents about one fourth to one third of all legal offenders.¹ Douglas Morrison says in his preface to *Juvenile Offenders*.

"It is perfectly well known to every serious student of criminal questions, both at home and abroad, that the proportion of habitual criminals in the criminal population is steadily on the increase and was never so high as it is now."

In different sections of England the proportion

¹ *The Criminal*, Drähms, p. 194.

of prisoners tried who had been convicted before varied from forty-seven per cent. in London, to seventy-nine per cent. in Liverpool, Birmingham, and Bradford. An habitual criminal is an anomaly of penal jurisprudence, the supreme object of which is to prevent an offender who has once been convicted from repeating the offense.

The crime habit is acquired like all others by continual repetition, for which there must be freedom from restraint. The practice of crime cannot attain the uncontrollable power and influence of habit by a very few indulgences alone ; although the natural proclivities of some individuals are so favorable that the habit appears to be very easily established in them. The foundations and beginnings of habitual criminality are laid in early life, and by the practice of small errors and unnoticed or unpunished dishonesty. Petty thefts, successful deceptions in childhood, the lack of moral culture, allowing egoism to outgrow control and principle ; evil youthful environment, form the habit, which impels its contractor, as his age, strength, and courage increase, to advance by degrees from insignificant to serious peccadillos, until finally, becoming over presumptuous, he falls under the condemnation of the law, a confirmed habitual criminal perhaps upon his first conviction. The crimes of this category are less heinous than those of the strictly instinctive criminals, but they fret and annoy more generally. This entire category would be eliminated by the general adoption of the indeterminate sentence to a

The Instinctive and Habitual Criminal 241

reformatory for all local offenders convicted of serious crime.

The habitual criminal, however, does not ordinarily return to the locality of his former conviction when released. Every consideration leads him to prosecute his trade where he will be least suspected and watched, and where if he is arrested there will be no prejudicial record against him. The cumulative increase of punishment for repeated crimes also influences the habitual offender to shun the risk of conviction in courts where his identity is likely to be established.

In Massachusetts, 24,737 of those arrested in cities were non-residents; being nearly thirty-two per cent. of the whole number arrested in 1898.¹ The general adoption of the Bertillon system of identification would very generally prevent such persistence in crime as constitutes the habitual criminal. When a non-resident or person of unknown antecedents is arrested, his measurement should be taken and sent immediately to the central bureau (which should have the records of all living criminals previously arrested), and his history, if found there, would determine the disposition to be made of him by the court. There is no rational excuse for allowing any one to practise the commission of crime in a civilized community until it becomes habitual to him. It is a penological law *that instinctive and habitual criminals should be imprisoned under an indeterminate sentence as soon as discovered.*

¹ *Report of Massachusetts Prison Association for 1899*, p. 11.

Experience has proved that a large proportion of the prisoners sent to reformatories, even under indeterminate sentences (so called), are discharged as cured after a very brief term of treatment. Society is not done with them, then, even by such a sentence, but will have to receive them back into its ranks to plague it sooner or later.

“Habitual criminality is usually attributed to ingrained evil character. But much of it has its origin in mere weakness ; lack of opportunity ; the discouragement which results from failure to secure a place in the world, and the friendlessness, not to say enmity, of the community. . . . The community is indifferent ; the taxpayer has no realization of the importance of restoring the criminal to a place in the world ; and even the Church sometimes looks askance at the man who has once worn prison garb. . . .

“The appeal in behalf of the discharged prisoner must be not merely to the philanthropist, but to the business man. It must be made clear that the wise treatment of the ex-prisoner is not a matter of charity, merely, but of common-sense and good judgment.”¹

It is more than that even, it is a matter of social economy and self-protection. Having arrested and reformed him, having cured and trained him, having broken up the habit of criminality and inculcated the habit of industry and self-support, having taught him a trade and inspired him with principles of honesty and morality, the State cannot afford to thrust him out alone and unaided into the struggles and temptations of competitive social existence. To loose a prisoner from all restraints, to remove

¹ J. J. Lytle, *Report of National Prison Association*, 1899, p. 184 *et. seq.*

all helps upon which he depended, to expose him suddenly, weakened by confinement, to attack on all sides from his former enemies within and without, is most likely to sacrifice at once all that has been expended upon him in years of reformation. This is the reason why Mr. Brockway refused to release his prisoners before places were found for them where they could be tested in free life under temporary surveillance. It is the duty of society to give the discharged prisoner, especially the habitual criminal whose character was due to its neglect, a fair start upon an honest career when it withdraws its restraining hand from him as a convalescent. It cannot rely upon voluntary philanthropy, Christianity, or any irresponsible organization. All these agencies are inadequate. Some employ wise methods; some are more dangerous than useful. Some discharged prisoners' Homes have become, for lack of official supervision, resorts to criminals where crimes have been hatched and planned. The Government is the only agent competent to discharge this final duty also.

It is comparatively easy for the Government to enact that all prisoners shall be tentatively released upon parole of good behavior, for a time measured according to the apparent character of the prisoner. All of the necessary machinery of surveillance and assistance exists already in the prison wardens and in the magistracy and police of the discharged prisoners' domicile. Prison wardens should be obliged to keep in regular monthly correspondence

with every prisoner released until he becomes permanently established in honest free living. We have then this law of Penology, to which the reformed man will not object, *that all prisoners should be primarily released upon conditional parole, and returned to prison for its violation.*

CHAPTER XIII.

JUVENILE AND FIRST OFFENDERS—PROBATION AND PAROLE.

The most Extensive and Difficult Branch of Penology—Juvenile Offenders Defined—The Criminal Age—Statistics and Deductions—The Problem Stated—Its Solution—Probation Officers—Sentence for Light Offenses—When Severe Measures are Necessary—For Crimes of Lust—For Felonies and Heinous Crimes—Insane and Defectives—The Probation System—Requirements and Advantages—Experience of Massachusetts Losses by Failure to use the Privilege—Possible Saving—Arrests for Drunkenness—For Other Offenses—Parole—Duty of State to Discharged Prisoners—How to be Exercised—Conditions of Parole—Probation, Reformation, and Parole.

IF completely effective measures can be devised for the permanent cure or the restraint of the criminal disposition of juvenile and first offenders, and thus prevent them from repeating crime, the criminal class will be extirpated before it is formed, and the objects of criminal legislation largely accomplished ; for every criminal passes through this stage. This category is the most amenable of all to reformatory treatment, and therefore the most hopeful subject of social effort. Moreover, juvenile crime is increasing, both in Europe and America.¹ This increase demonstrates irrefutably

¹ See Douglas Morrison, *The Juvenile Offender*, p. 16, and Dr. Drähms, *The Criminal*, p. 272.

that the methods of restriction established by the present criminal codes have not kept pace with the progress and needs of civilization.

But the causes, conditions, and cure of juvenile criminality embrace the entire range of social science, in all its physical, psychical, ethical, and religious branches. It is, therefore, by far the most extensive, difficult, and important section of Penology. Although complete success is not to be expected without complete social regeneration, science and experience can offer remedies which will very materially reduce the numbers of this category, and consequently of the dangerous element.

Juvenile offenders are all those persons above the school age of six years, and below the age limit for reformatory treatment of twenty-five years, when they first fall into the hands of the officers of the law. Nature makes two subdivisions of them along the line of criminal responsibility, which, though often difficult of discernment, normally runs at the upper school age of fifteen years. These divisions by law and common consent require quite different treatment. Juvenile offenders below this line of responsibility belong to the category of "presumptive" rather than actual criminals. They will be considered later under that heading. They should never be held or dealt with as real criminals under the law, except in the rare cases when great crimes, indicative of serious moral depravity, require severe and certain repression. We confine our attention here to juvenile and first offenders above the school age.

The decade between fifteen and twenty-six years of age is esteemed the character-forming time of life. It is the plastic period in which is moulded, generally, the future career of most individuals. Criminologists name it the criminal age,¹ because in this decade convictions reach their maximum number according to age. It is the time when youths are generally compelled by poverty to begin to support themselves, or impelled to take criminal risks to improve their condition or gratify their desires. They are then least capable of earning an honest living, or qualified to resist temptations. The careful and extensive investigations of Douglas Morrison, recorded in his *Juvenile Offenders*, show these offenders to be as a class below the average in health, height, and strength. The death rate in English industrial schools is twice as great among boys, and three times as great among girls, as among those of the same ages outside. Boys were seven inches shorter, and $24\frac{3}{4}$ lbs. lighter than those in the public schools ; 39 in 100 were orphans ; 29 per cent. were abnormally defective, to 17 per cent. in day schools. Similar conditions prevailed among the juvenile inmates of reformatories and prisons. One half of the juvenile offenders were apparently driven into crime by incapacity of one kind or another.² Of the juvenile offenders committed to English reformatories in 1891, 66 per cent. were

¹ *The Criminal*, Dr. Drähms, p. 283 ; *Juvenile Offenders*, Morrison, p. 58 *et seq.*

² *Juvenile Offenders*, pp. 88-110.

either full or half orphans, or were not living with parents ; 44 per cent. had both parents alive.¹ The number of incorrigible children among them does not exceed seven or eight per thousand. "The weakness of will in the parent reappears in the child in the form of an absence of power to resist criminal instincts and impulses."¹ Of 9344 persons committed to the Elmira reformatory, 90.5 per cent. were between sixteen and twenty-five years of age, and therefore included in our category. Of the total 10.8 per cent. had an insane or epileptic ancestry ; 46.8 per cent. a more or less clearly traced drunken ancestry ; 84 per cent. had parents without accumulations ; only 13.6 per cent. had good homes. Of the 4303 homeless, 37.8 per cent. occupied furnished rooms in cities ; 22.8 per cent. were itinerants ; 20.8 per cent. tramps. The associations of 54.7 per cent. were positively bad, and of 43.1 per cent. not good ; 91.3 per cent. were in good health, but 31.3 per cent. of a low or coarse quality ; 41.8 per cent. of medium ; 80.5 per cent. were of good mental condition ; 81.5 per cent. with very slight or no culture ; 76.1 per cent. had either no, or possibly a little, susceptibility to moral impression ; and 71.9 per cent. either absolutely no moral sense, or possibly some, or filial affection, sense of shame, or of personal loss.²

"In cases where reformatory school inmates have both parents alive I find that in nine cases out of ten one or other of

¹ *Juvenile Offenders*, pp. 88-110.

² *Elmira Reformatory Year Book*, 1899.

these parents is distinctly disreputable. Only six per cent. of the children in industrial schools had homes which were morally fit for a child to live in."¹ "Not more than fifteen per cent. of the juveniles committed to reformatory and industrial schools come from homes in which they are fairly housed, fairly fed, and fairly clad."²

These statistics, which are indicative of conditions prevailing in all civilized countries, make it evident that all juvenile criminality is due either to incapacity for honest self-support from physical or mental defects, or to moral depravity resulting from corrupting youthful circumstances and defective training. The juvenile offender is the joint product of bad heredity and bad environment. Probably ninety per cent. of them are morally depraved, and when at liberty are surrounded by depraving associations. Unless these conditions can be changed, the culprit is certain to become an habitual criminal, more expert, daring, and dangerous as he becomes more experienced. The ten per cent. of normal character and environment who have probably avoided minor crimes and been convicted of those which are flagrant, are on the other hand in danger of corruption into habitual criminality by imprisonment and association with depraved criminals.

The social problem of the treatment of juvenile and first offenders is as complex as it is important. The only satisfactory solution of it is to prevent them becoming habitual criminals. Penological science lays down these general rules for the working out of this solution :

¹ *Juvenile Offenders*, Morrison, p. 150.

² *Ibid.*, p. 162.

First: *Imprisonment of juvenile and first offenders is absolutely prohibited, except as a last resort for those convicted of flagrant crimes.* The reasons for this rule are these: Neither society nor the offender receives any advantage, but rather suffers a positive injury from imprisonment. It breaks down the self-respect of the convict, and inflicts a life-long stigma on his character. Its deterrent power is destroyed by familiarity with its relief from care, comfortable support, and congenial associations. It impairs the physical and mental as well as the moral health of the prisoner, and his ability to earn an honest living when released. It is a frightful cruelty and injustice to the innocent and the novice in crime; and neither a punishment nor a benefit to the guilty.

Second: *When a limited imprisonment is necessary it must be by entirely separate confinement.* Whatever difference of opinion may exist concerning the respective advantages of the separate and congregate systems of confinement for other convicts, penologists and sociologists are generally agreed that juvenile and first offenders should never be exposed to the contamination of other criminals in prisons.

Third: *Juvenile and first offenders should never be confined in jail with other prisoners while awaiting trial, or under remand.* Complete isolation is indispensable to preserve the innocent from contamination, physical, mental, and moral, and to allow the guilty solitude for reflection and repentance.

It enables the warden to observe and detect disease or insanity; and protects the prisoner from the serious evil of future recognition by other prisoners after his discharge. M. Laloue, Inspector-General of prisons in France, stated before a commission

“that with our existing system, twenty-four hours’ imprisonment suffices under certain circumstances to ruin a man. I do not exaggerate. I say what I have seen. The prisoner meets a corrupt recidivist; they appoint a rendezvous outside, and that man is lost.”¹

All intelligent penologists agree upon this rule.

Fourth: *That the primary and supreme object of the sentence of a convicted juvenile or first offender is his rescue from a criminal life.* This is equally essential for the protection of society and the salvation of the convict. Both punishment and restitution are secondary and incidental considerations for them, chiefly useful as they contribute to these objects.

Fifth: *That the character and circumstances of the accused should be carefully investigated, and allowed full weight and influence in determining whether the juvenile or first offender should be tried and convicted or not, and in fixing the kind of sentence which should be imposed upon conviction.* A conviction of crime, especially if it is of a disreputable or dishonest nature, may inflict an indelible stain upon a youth, and seriously impair his future success in life. Such an injury ought never to be inflicted for minor or accidental offenses. These

¹ Testimony of Dr. J. T. Gilmour, Warden Central Prison, Canada.

are often the result of immaturity and evil associations, rather than deep-seated criminal propensities. The law will be more efficient by simply displaying its power and certainty; by showing a disposition toward mercy, and a desire for correction rather than vengeance.

In every court there should be a probation officer—an official intermediary between the judge and the prisoner, to act as the confidential friend and adviser of the accused and the trusted agent of the law. He should be a man of intelligence, good judgment, kindly sympathy, and firm will, who should carefully investigate the personal history of every one accused of crime before his trial. Upon his report and recommendation the judge should decide, first, whether or not it will be necessary to proceed to a trial and conviction; second, concerning the kind of sentence which should be imposed for guilt. If it is consistent with the public safety and there is hope for the correction of the first offender, he should be strongly, but kindly, admonished by the court and dismissed without trial, under the temporary surveillance of this officer. It will then devolve upon the probation officer to deliver the erring from his corrupting associations, to secure him honorable employment, and to assist him by good counsel to lead an honest life.

“For experience shows conclusively that a paternal solicitude, which is invested with the dignity of the law and the authority of the courts, often has weight and influence where

the ordinary and unofficial forms of moral suasion are of no avail." ¹

In cases where more severe measures are necessary, a trial and conviction may be permitted. If the legal maximum penalty be two years or less of imprisonment for the crime committed, a fine should be imposed instead, which the culprit should be allowed to earn by work, if necessary, and pay in installments through the probation officer. The sentence of imprisonment should be suspended during good behavior, if the fine is paid; the probation officer being required to report monthly concerning the behavior of the prisoner, and to return him to the custody of the court for delinquency. When the fine is liquidated, upon a favorable report by the officer, the prisoner should be discharged. This method of procedure will keep out of prison very many who ought not to go there, reduce the prison population and the cost of maintaining prisons, materially increase the revenue from fines and the social compensation of criminals, and relieve the district attorney of much of the responsibility of deciding upon the course of action required in these cases.

The sexual crimes of rape, incest, adultery, and fornication with imbeciles, insane, drugged or drunken females, and girls under the age of consent, indicating great moral depravity, should be punished, like the same crimes committed by other criminals, by castration and an indeterminate

¹ City of Boston, Document 158, 1899.

sentence to a reformatory with a minimum limit of a five-year course.

For felonies and crimes, the legal maximum penalties for which are fixed between two years and life imprisonment, juvenile and first offenders should be sentenced to the reformatory under the indeterminate sentence, with a minimum course of five years, for the reasons given in the chapter on reformation.

The partially insane, the imbecile, the weak-minded, and the epileptic should be committed to their appropriate asylums; the physically deformed, diseased, and incapable to the almshouse. It is an unjustifiable cruelty to condemn those who have been forced into crime by their infirmities and misfortune, the result often of preceding social error and neglect, to the hardship, disgrace, and punishment of penal institutions. For such heinous crimes as require that the perpetrator be confined for life, there should be no mitigation of the sentence of the juvenile or first offender. Such depravity of character is too dangerous to be at large.

The probation system of dealing with criminals, and especially with juvenile and first offenders, is the latest and most beneficent product of penological science. Connected and combined with the reformatory treatment of convicts in confinement, and their discharge on parole as a test in freedom, it constitutes a rational, scientific, and promising system as a substitute for the obsolete and useless

plan of vindictive penalties. It was introduced into the legislation of Massachusetts in 1891, and has since been adopted, to a limited extent, by the States of Vermont, Rhode Island, Michigan, Illinois, Ohio, and Minnesota. Under it these juvenile and petty offenders are made to understand the majesty and power of the law, and at the same time offered another opportunity to choose between freedom and the prison. They have another chance at reformation by strengthening their wills and developing the power of self-control under the powerful stimulus of the friendly assistance of an officer of the law, aided by the most effective deterrent yet devised—suspended punishment; or they may elect personal disgrace, family humiliation and suffering, and social suicide.

The State of Massachusetts has had the longest and most general, although still incomplete, experience with the probation system of any State. Its Prison Commissioners say in their report for 1899:

“Wisely administered, too much cannot be said in commendation of this system, which has for its object the prevention of crime. Experience has demonstrated it is the most powerful moral influence that has been introduced into the modern system of the treatment of drunkards and criminals. It is a source of vast economy to the State.”

During the year ending September 30, 1899, there were 96,019 arrests made in that State, of which 59,808 were for drunkenness; and of these 51,141 were referred to the probation officers. The statements of 43,756 persons were found to be true,

7,001 untrue, 263 doubtful ; 23,255 cases were investigated by order of court, and 3966 taken on probation. Cases of all kinds taken on probation numbered 5626. Of these, 1208 were persons between the ages of fifteen and twenty-six years ; viz., 121 were sixteen years of age, 110 were seventeen, 98 were eighteen, 106 were nineteen, 98 were twenty, 131 were twenty-one, 131 were twenty-two, 141 were twenty-three, 132 were twenty-four, 140 over twenty-five years of age ; and 3822 were twenty-six years and older. There were 592 of school age,—fifteen years and under. Of the 1208 juvenile offenders, 1 was taken on probation for adultery ; 48 for assault and battery ; 1 *for violating bicycle law* ; 1 *for breach of the peace* ; 13 for breaking and entering ; 2, *breaking glass* ; 32, *violating ordinance* ; 52, common night-walkers ; 2, *disorderly conduct* ; 1, *disturbing religious meeting* ; 39, *disturbing the peace* ; 684, drunkenness ; 5, embezzlement ; 3, false pretences ; 1, *fast driving* ; 5, fornication ; 1, *gaming, being present at* ; 1, *violating health laws* ; 61, *idle and disorderly* ; 108, larceny ; 2, lewd and lascivious cohabitation ; 1, *violating liquor laws* ; 1, *liquor nuisance* ; 1, *violating Lord's Day* ; 17, malicious mischief ; 25, *neglect of family* ; 1, *violating park laws* ; 2, *playing ball in street* ; 1, *practising dentistry without license* ; 1, *profanity* ; 2, receiving stolen goods ; 7, *obstructing sidewalks* ; 72, *stubbornness* ; 2, *threats* ; 4, *throwing missiles* ; 9, *trespass* ; 1, unlawful taking ; 8, vagrants ; 2, *walking on railroad*. In all there were 39

different offenses, 25 of which (printed in italics) do not necessarily imply a criminal disposition, although necessitating the arrest of 273 persons who would doubtless have been made criminals by imprisonment. The variety of crimes indicates the possibly wide application of the system.

The total number of sentences imposed in all courts was 56,817. The total number taken on probation was therefore only about ten per cent. of those sentenced ;¹ so that it appears that the courts even in Massachusetts do not yet fully make use of its advantages. The recidivists committed to all prisons during the year numbered 14,810, 47 of whom had been previously committed more than 50 times each. The 10,383 whose previous commitments were given up to 6 each, had been committed 35,185 times ; 3435 had been committed from 6 to 15 times ; averaging them at 10 times each would make 34,350 more ; 767 from 16 to 30 time, averaged at 23 times, would be 17,641 commitments ; the 178 given as having been previously committed from 31 to 50 times, averaged at 40 times, would make 7140 ; and 47 averaged at 60 times yields 2820 ; a total number of 97,136 commitments. At the average cost of criminality as computed by the Prison Association for 1898,² which was \$161.25 per commitment, these 14,810 criminals had already cost the State \$15,663,182, or \$1057 apiece.

¹ *Report of Commissioners of Prisons, 1899.*

² *Massachusetts Prison Association Bulletin, No. 12.*

There were 4323 who paid fines and costs averaging \$8.15 apiece. But 16,075 were committed to jails for non-payment of fines and costs who doubtless could have been made to work out these charges under the probation officer. At the average rate of those who paid, this would have added to the public treasury \$147,086. Assuming that they were held on an average of thirty days each, their maintenance, at thirty cents a day, cost the public \$144,675. There were also 7413 committed for less than six months each. Assuming that ninety per cent. of these could have been taken on probation to work out fines averaging \$20 each, the 6672 would have paid in fines \$133,440; and if their confinement averaged ninety days each, it cost the public \$180,144 for maintenance alone. The public would therefore have made a direct and immediate profit, during the first year, of the sum of \$605,345 by the application of the probation system to these cases; besides the incalculable future advantage derivable from keeping 22,747 persons out of the criminal factory during the year. There is no law of penological science more absolute and inflexible than this, that short terms of imprisonment in association with the depraved herds found in jails and houses of correction transform a first offender into a habitual or professional criminal. Whatever proportion of these might have been saved by probationary treatment, it is morally certain that nearly all were ruined by imprisonment. The experience of Massachusetts in this respect

indicates the immeasurable advantages which would accrue from the adoption of the probation system in all our States.

Of the arrests for drunkenness, which were 62.28 per cent. of all arrests, only 6.63 per cent. were taken on probation, and 57.38 per cent. in all were sentenced. A few less than 30 per cent. of those arrested were committed for non-payment of fines and costs, and for less than six months. Probably 50 per cent. of those arrested would have been better treated on probation.

Of those arrested for all other offenses (37.72 per cent. of the total arrested) there were only 4.58 per cent. taken on probation ; of the 62.1 per cent. committed, 16.77 per cent. were sent to prison for non-payment of fines and costs, and for less than six months. Probably 25 per cent. of those committed, at least, and 50 per cent. of those arrested who were not committed, would have been more wisely dealt with on probation. This would have cared for about 32 per cent. of all arrested on other charges than drunkenness, instead of the 4.58 per cent. actually taken on probation.

Certainly one half of all persons arrested for drunkenness and one third of all those arrested for other crimes, including most of the juvenile and first offenders, should, as a general rule, be given another chance on probation under a wise and careful officer before the terrible risk of prison is imposed upon them. The probation system is not an experiment. Its general adoption would stop

the growth of the criminal class, depopulate our jails and prisons, restore thousands of youths to honesty and usefulness, and save the people millions of more than wasted money every year. The State can no longer afford to neglect this great social economy.

The subject of the parole of discharged prisoners is naturally connected with probation by coincidence of purpose (which is the prevention of relapse) and the similarity of the methods employed. "Parole is the post-penitentiary, as probation is the pre-penitentiary treatment of criminals." Probation is intended to avert the threatened disease of criminality when symptoms have appeared. Parole is intended to prevent a relapse during convalescence, after cure. One is quite as necessary and efficacious as the other. When a prisoner is first restored to liberty the rebound of his nature toward the indulgences which have been so long denied him, the solicitations of corrupt companions who have been waiting for him, the cold shoulder which the world turns toward the ex-convict, unduly magnified by his self-conscious abasement, the great difficulty or impossibility of securing honorable employment unaided, the lack of useful friends, the strange circumstances of freedom, and the necessity of independent self-support, all combine to neutralize the reformatory influences which may have been used, to break down his good resolutions and drive him back into criminality. The first days of freedom are the critical period of

every discharged prisoner's life. If he is simply given a suit of clothes and shoved out of the prison door with a few dollars in his pocket, in nine cases out of ten an old pal meets him with a criminal enterprise ready planned; a brothel is his first resort; a spree consumes his money; a crime is committed; and he soon finds himself again under lock and key, a recidivist.

In recognition of these conditions many philanthropic societies have been formed for the assistance of discharged prisoners; the first being the Pennsylvania Prison Society, founded in 1787, in Philadelphia. They now exist in many States in America, and in Europe. Dr. Barrows, United States Commissioner to the International Prison Congress of Paris in 1900, reported to the National Prison Congress of that year that there were 101 such voluntary societies in France. Mrs. Ballington Booth has devoted much of her marvellous powers for several years to this great work; and reports that at least seventy-five per cent. of those she has aided are living honest lives. But private charity and unofficial Christianity cannot, and ought not to be depended upon to do, fully and regularly, what it is the manifest duty of the State to perform. The State has produced by imprisonment most of the adverse conditions which endanger the discharged prisoner; it is incumbent upon the State, therefore, to protect and assist those it has rendered helpless until they are rehabilitated. As it is its exclusive function to protect society from criminals, and to

prevent those identified from continuing in criminality, so it is very greatly for its economic interest to establish the ex-convict in honest self-supporting life, in order that he shall not become habitually criminal. It has in some cases accepted this responsibility in connection with the prisoners discharged from its reformatory prisons. The individual rights of the incapacitated ex-convict, the protection of society, and economical administration all require that it shall assume this responsibility for every prisoner let loose. It is a positive mandate of our science *that the State shall continue its supervision of all discharged prisoners until they have proved their ability to live harmlessly at liberty.*

Upon the completion of a prisoner's term of confinement he should be delivered by the prison warden into the care of a probation officer; who should secure employment for him; provide him with tools if necessary; and assist him for at least a year, by advice and otherwise, to maintain himself honestly. A fund sufficient for this purpose should be at the disposal of the probation officer. This can be supplied from the earnings of prisoners. The probation officers should report monthly to the respective wardens, concerning the conduct and employment of all in their charge; and have authority to return delinquents to prison to serve under an indeterminate sentence.

The conditions of parole release of a prisoner in Massachusetts are these:

" 1. He shall not violate any law of this Commonwealth.

" 2. He shall not lead an idle or dissolute life.

" 3. He shall not visit any barroom, gambling house, or house of ill fame, or associate with persons of notoriously bad character.

" 4. He shall not use intoxicating liquors.

" 5. He shall report to the Commissioner of Prisons by letter or in person once in each month.

" A returned prisoner becomes subject to the same rules as one recommitted by the courts, and is required to serve a considerably longer time than under his first commitment." ¹

Such a law, generally enforced, would greatly relieve society from its apprehension of the ravages of returning ex-convicts, and from much of the cost of habitual criminals. Experience proves that such surveillance is not expensive, or difficult. Identity is easily preserved by the Bertillon method.

Upon the three systems of probation, reformation, and parole, society must rely for its protection from juvenile and first offenders especially, and for the restriction and reduction of the criminal class which now afflicts it.

¹ *Report of Commissioners of Prisons of Massachusetts, 1900, p. 104.*

CHAPTER XIV.

PRISON LABOR.

The Problem Stated—Public and Legislative Discussions—An Insignificant Item in Industrial Economics—Prisoners should Earn as Much as Possible toward their Maintenance—Concentration of Prison Labor on a Few Products Objectionable—An Important Reformatory and Penal Consideration—Necessary for Discipline—High Concern to Prisoners' Health and Training—Essential Element of Reformation—Obligation of State to Employ Prisoners—The Fundamental Principle—How Tried and Failed—Conclusions of National Industrial Commission, 1900—Conclusions Discussed—Restriction of Hours of Labor—Prohibition of Machinery—Boycott of Prison-made Goods—"State's Use" Plan—Labor in Penitentiaries—Life Convicts in Public Works—Labor in Jails and Reformatories—In Industrial Schools and Asylums—Number of Jail Prisoners in Idleness and Results—Working out Fines as a Remedy—Local Public Work for Short-term Prisoners—General Scientific Scheme of Prison Labor—Social Duty of Employing the Discharged Prisoner.

"**H**ARD labor" has from very early times been a part of the penalty imposed upon convicts. Imprisonment with hard labor for a definite term is still the sentence specified in most of our criminal codes as the legal punishment for felonies. Useless punitive labor of the "crank" and "treadmill" kind, however, has long been abandoned along with other cruelties as inhuman and without social value. Experience has proved also that enforced idleness in confinement is as unreasonable and cruel as torture. It destroys the physical,

mental, and moral health, induces disease and insanity, incapacitates the prisoner for honest self-support when liberated, and makes him a life burden or enemy of society. As humane principles began to control the treatment of prisoners in confinement it became manifest that it was unjust and unfair to compel the honest people whom the criminal had wronged to support him in comfortable idleness by their own labor. Idle convicts are now recognized by intelligent people as contrary to law, reason, nature, and social economy. How to make them contribute the most possible toward their own maintenance, and best fit them for honest self-support when liberated, with the least interference with wages and the prices of labor and products of free industry, is a question which has been much studied and discussed in the last twenty-five years.

Labor agitators, demagogues, and politicians catering to the labor vote, have attracted the public attention to this question, and caused the enactment of various restrictive measures which were not intelligently considered and have proved to be injurious to both the public and the prisoner. Legislative commissions in several of the States, notably in Massachusetts, New York in 1898, and Pennsylvania in 1897; the United States Department of Labor, and the Congressional Industrial Commission in 1900, have made exhaustive investigations and reports on the subject of prison labor; penologists and sociologists have written much on it, so that some facts have been made known, some

disputed questions about it settled, and some general principles established. A better public understanding of the subject makes possible more beneficial legislation than has heretofore been had.

In the first place, prison labor has been shown to be a much less important item in our industrial economics than it was supposed to be. The United States Commissioner of Labor, in his report for 1886, which gives the latest general statistics for the whole country concerning convict labor, says :

“ The competition arising from the employment of convicts, so far as the whole country is concerned, would not of itself constitute a question worthy of serious consideration. The products of the prisons were then but fifty-four one hundredths of one per cent. of the total merchandise products of the country. The whole prison population of those institutions in which productive labor was then carried on was but one in a thousand of the population of the country, and those engaged in convict productive labor but one in three hundred of those engaged in free mechanical labor. The total value of the labor expended by convicts in the State penitentiaries and prisons of like grade at that time did not much exceed \$2,500,000, or a little more than one tenth of one per cent. of the total wages paid in the manufacturing industries of the country in 1890.”

Dr. Carroll D. Wright, the United States Commissioner, stated in the able and exhaustive treatise on this subject which he read before the National Prison Association in 1899 :

“ Here and there prison labor did affect wages and prices, but in all the investigations which I have made on this subject during the last twenty years I have never found much influence

in either direction growing out of the employment of prisoners."¹

The very small proportion in numbers or value of product which it bears to the totals in the country renders it impossible for it to exert any appreciable influence in these directions. It has become manifest that the importance of the interference of prison labor with free labor has been greatly overestimated. The labor of a man in prison certainly cannot be more competitive than if he were supporting himself honestly by it outside in freedom. In fact, the investigations have proved that all prisons as a whole are run at a loss to the State, and under the best systems heretofore in use the return for labor has not been more than from fifty to seventy-five per cent. of their cost.² "The total income from labor in all the United States prisons in 1886 was but thirty-two per cent. of the total expense."³ "Free workmen produce nearly three times as much per day as the convict on a general average."⁴

Although the prisoner cannot earn his entire support, true social economy requires that he should be made to contribute as much as he can toward it by his own labor, under the most advantageous circumstances and with the best facilities which can

¹ *Report of National Prison Association, 1899*, p. 213.

² *Idem*, p. 217.

³ *Report of Industrial Commission on Prison Labor, 1900*, p. 61.

⁴ *Report of National Prison Association, 1899*, p. 83. Dr. Wright's paper gives a full résumé of the status of the subject in this country at that time, with his conclusions.

be provided, rather than that honest outside labor should be burdened with the whole of it. Nevertheless, the hostile legislation largely induced by the efforts of labor unions, reduced the value of goods produced or work done in the prisons of the country from \$24,271,078.39 in 1885, to \$19,042,472.33 in 1895, a decrease of 21.5 per cent. Thus the production of \$5,228,606 worth of goods was shifted from the shoulders of those who ought to have done the work to those of outside workmen.¹ This is not good public policy or wise statesmanship. Scientific political economy and penology both plainly demand *that criminals in confinement shall be made to reduce the cost of their maintenance to the greatest possible extent by their profitable employment.*

The only valid objection which the free laborer can make against prison labor arises when the labor of a large number of convicts is concentrated upon a single industry, the product of which has a limited market. That there is a possibility of serious and injurious competition under such circumstances was demonstrated by the experience of the cooperage trade in the West, when most of the cooperage for the Chicago and neighboring packing markets was produced in the Joliet and Michigan City penitentiaries. In ten years there was a falling off of 33.7 per cent. in the price of packages and a reduction of 30 per cent. in the average wages of outside coopers, who fell to the rank of day laborers,

¹ *Report of Industrial Commission on Prison Labor, 1900, p. 9.*

while the market increased 129 per cent.¹ Such a concentration of prison labor is equally objectionable on account of its limitation of the educational and reformatory advantages of the prisoner. It is therefore prohibited by every consideration of public policy, except pecuniary profit, which is of secondary weight in the decision. This objection is entirely removed by a proper diversity of employment, which also insures the best industrial training to the prisoners.

But beyond its directly economic relations with outside labor, prison labor has a social importance which entitles it to all the consideration it has received, or that can be given to it. It is a potent agency in the reduction of crime and of the criminal class. It is the duty of the State to govern and control all its reformatory and penal institutions, and their convicts; to so manage these as to prevent, as far as possible, the continuance of prisoners in criminal depredations, to reduce the public expense for their confinement to the smallest cost, and to avoid harmful concentration of their labor. The reformation of convicts is well-nigh impossible unless they are employed at productive labor. The law is not executed by enforced idleness. Its deterrent effect upon the indolent and depraved at liberty is destroyed; its punishment is transformed, in the estimation of those whom it is intended to restrain, into a reward; its execution perverted

¹ *Report of United States Industrial Commission, on Prison Labor, 1900*, p. 36.

from the correction to the corruption of its victims by the mischiefs of idleness ; and the whole object of society in its criminal codes defeated if its prisoners are not compelled to work, to work hard, and profitably. These statements no longer need the support of argument ; nor does the statement that a rational economy of maintenance cannot be secured without the productive employment of the prisoner. Constant experience has likewise demonstrated that a proper control and wholesome discipline of the criminal in confinement is greatly facilitated by hard work, if it be manifestly useful work. It is therefore a material aid in the management of criminals. Continued idleness, moreover, destroys the health, induces insanity and depravity, and completely incapacitates the prisoner for honest living. What has been shown to be an advantage to society thus becomes its absolute duty to its prisoners. For, unless we accept the repugnant doctrine of extinction as the cure of criminality, it is not to be tolerated that the State shall, by the manner in which it executes sentences, augment their severity up to the point of what is in effect capital punishment.

The question is of the highest concern also to the prisoner. Useful labor is an essential sanitary measure, to which he is as justly entitled as he is to wholesome food and drink, pure air to breathe, sufficient and proper clothing, protection from extremes of heat and cold, contagion, disease, all unnecessary suffering, and cruelty. Over seventy per

cent. of the 9344 prisoners who were committed to the Elmira reformatory had been employed at manual labor, fifty-five and seven-tenths per cent. as common laborers. It is probable that at least eighty-five per cent. of all prisoners in all prisons have been more or less less accustomed to physical rather than other labor before incarceration, and that they will be obliged to depend upon manual labor for support when released. The maintenance of the physical health and strength of all these is almost entirely dependent upon a continuation of the exercise of their muscles and faculties in useful labor during confinement. This is also quite as useful to the health and training of the other fifteen per cent., who are likely to be physically weak and inferior. There is no rule of therapeutics more inflexible than that which requires regular action and exercise for the conservation of health.

It is likewise an essential element in the reformation of the criminal. This, in a social sense, consists in teaching him a useful occupation, and training him in the practice of it, until the habit of indolence and rapine is broken up, and the habit of regular industry is substituted for it. Over ninety-two per cent. of all who have been committed to the Elmira Reformatory were guilty of crimes against property.¹ As this is the evidence of twenty-four years' experience it is a reliable indication that the great mass of the criminality of the country is the result of industrial inefficiency; that is, that the

¹ *Elmira Reformatory Year Book for 1899.*

generality of criminals are impelled to crime either by indisposition or inability to procure what they want honestly. The logical and natural deduction is that the most effectual remedy for criminality, and the most complete social protection from crime is to be expected from a transformation of criminals into profitable producers. When a prisoner has been taught how to acquire the means of supplying wants honestly, the necessity for prey will be removed, the attractiveness of honest industry will outweigh in his estimation the risk of criminal pursuits, and he will be led to adopt honesty as the "best policy" of life. When the State gives the criminal a good trade and inspires him with a disposition to practise it, it has atoned, to the extent of its ability, for any former neglect of duty toward him. It has transformed the dangerous dependent into an independent citizen; it has bestowed a personal capital upon him, which cannot be lost or stolen, and which will always be sufficient for his maintenance.

"Industrial training either pure and simple, or by engaging convicts in some useful industry, is the only way to make them obedient and tractable while in prison, and industrious and useful members of society when they are released."¹

"Every interest of society and consideration of discipline, economy, reformation, and health demands that prisoners should be kept employed at productive work. Manufacturers, wage earners, and all who have given the subject any consideration are practically unanimous in this conclusion."²

¹ *Report of United States Industrial Commission, on Prison Labor*, p. 21.

² *Report of the United States Industrial Commission, on Prison Labor*, p. 6.

The *imperative necessity of keeping all prisoners constantly employed in productive labor* is a positive law of scientific Penology. So inexorable is this law, that its infraction by imprisonment in idleness manifestly results in a much greater social injury than is usually to be feared from the freedom of the criminal under surveillance. It follows that society cannot justly permit convicts to be imprisoned unless it can set them at work. The obligation of the State to provide useful labor for its prisoners is quite equal to its obligation to provide restraint.

The fundamental principle is that every convict must earn the cost of his arrest, trial, and confinement for crime, if he is able, and that the State must afford him all possible facilities for doing this. The convict should therefore be charged with these costs, and credited with his work at its fair value at the place and time; board, lodging, and clothing deducted. If he is able in this way to accumulate savings, the warden should either remit them to dependent relatives, from time to time, or retain them as capital on which the convict can begin independent life when released.

No entirely satisfactory way of discharging this duty by the State, under existing criminal codes and methods of imprisonment, has yet been devised. The difficulties which have defeated the various attempts to observe this law of Penology seem to be insurmountable under the prevailing methods. These attempts have been almost

entirely restricted, moreover, to those confined in penitentiaries and in workhouses, who constituted about 60 per cent. of the 97,175 prisoners reported in the eleventh United States Census. For the 23 per cent. held under short-term sentences in jails and city prisons it has been practically impossible to provide regular useful labor. This is one of the principal causes of the pernicious results of imprisonment in these institutions, and constitutes one of the strongest reasons for the abandonment of their use as prisons. The tentative efforts which have been made have been grouped in two classes, the first including all those in which the State has endeavored to secure the business management of private parties by sharing with them the profit of prison labor under the "lease" system, the "contract" system, and the "piece-price" system; and the second comprising those in which prisoners have been employed for the sole benefit of the State; as under the "public account," the "State use," and the "public ways and works" systems. These systems were investigated by the Congressional Industrial Commission of 1900, and reported upon in Vol. III on Prison Labor. The following conclusions, among others, unanimously reached by the Commission, may be accepted as the latest declaration of penological science upon prison labor.

"First: That provision should be made in the laws of each State for the employment of all prisoners in productive labor.

Second: The State should have absolute control of the

care, punishment, reformation, and employment of the prisoners, as well as the disposition of the products of their industry.

Third : In order to harmonize the antagonistic interests of the different States it is essential that the industrial operations of all the penal, reformatory, and eleemosynary institutions in each should be under the supervision of a central office.

Fourth : The employment of prisoners with the intention of producing revenue, either for the State exclusively, or for private individuals or corporations and the State jointly, tends to the greatest competition with free labor.

Sixth : The employment of prisoners in the production of supplies for the maintenance of State, county, and municipal institutions and the support of the inmates of the same, or in work on the public buildings or roads, tends to the least direct competition with free labor.

Ninth : The most desirable system for employing convicts is one which provides, primarily, for the punishment and reformation of the prisoner and the least competition with free labor, and secondarily, for the revenue of the State."

In accordance with these principles the systems of employment of the first class are being rapidly abandoned in favor of the second or "public benefit" class. The Industrial Commission recommended, "that all of its provisions, or such of them as may be possible, shall be embodied in the laws of the different States, with such additional provisions as to management as may be necessary to meet the prevailing social conditions." In order to bring the States into closer harmony with penological principles, it would be preferable, for three reasons, that the administration of the law be imposed upon a single Commissioner of Prisons.

First : The duties of the position are insufficient

to occupy the entire time of more than one capable man. The interests of the public and the prisoners are likely to be more intelligently and efficiently promoted when the entire time and thought of one capable man are devoted to them than by the desultory attentions of several men. There will be a greater stimulus to the ambition of a single head than if any success or distinction for good management is to be divided among several. A salary large enough to attract the best talent can be offered to one man, which would still be less than it would be necessary to pay four, or a less number. A single commissioner would more efficiently discharge the duties of paroling prisoners, in conjunction with other officials, as heretofore suggested, than a mixed commission; and lastly, but chiefly, with a single commissioner there would be no divided responsibility for failure or success. The following provisions were not approved by all the members of the Industrial Commission, viz.: the limitation by a general law of the hours of labor; the suppression of all machines, except those operated by hand- or foot-power; and the prohibition of interstate commerce in prison-made goods.

These exceptions are founded upon sound principles.

The State has neither the ability to determine, nor the right to limit by law, either the quantity of a man's labor which he may dispose of, or the price at which he shall sell it. Such laws are in violation of personal liberty and independence and

the rights of private contract. They restrict the earnings and pursuit of happiness of the strong, skillful, and capable, to the limitations of the weak and incapable. They are tyrannical restraints upon free labor and upon prison labor, which should be regulated by the necessities of each particular prisoner for progress in reformation and toward freedom. Such a positive limitation of the hours of labor by a general law necessarily interferes very seriously with the discipline of the prisoners by the warden, who should have freedom to increase or diminish the work required of each convict according to his abilities, and as a reward for good, and as a punishment for bad behavior. The unrestricted control of the prisoner and his action by the warden is essential to good discipline.

The prohibition of the use of modern machinery and of the inventions for increasing the product of labor by mechanical power is pernicious in every respect. It is in principle a continuation of the long and universally condemned "crank" and "treadmill" idea of useless punitive work. It is an unjustifiable cruelty to impose unnecessary and irksome toil which arouses resentment and a rebellious spirit in the prisoner. It impairs the chief purposes of prison labor, the training of the convict for profitable employment when liberated, and lessens the pecuniary profit of the State from his labor, by compelling him to do his work in a manner which is obsolete outside the prison, and unprofitable everywhere. It degrades the prisoner

from the rank of an intelligent workman to that of a human machine, and thus tends to defeat what is announced in the ninth conclusion as the primary object of his labor, that is, reformation. The scientifically correct method of working prisoners is to train them to do their work in the very best and most profitable manner, just as they will be obliged to do it when released. Instead of prohibiting the use of power machines, the State should provide the same power machines as are used by free workers, as far as it is practicable for it to do so. Society requires that its affairs shall be managed with business skill and intelligence, especially that part of them which is conducted for its benefit as a business. It stultifies itself if it attempts to train the violators of its laws to honest self-support by manifestly false, hypocritical, and absurd methods.

On the same general principles the boycotting of the product of the prisoners' labor in any way, by law, is reprehensible. The appeal to the doubtful power of Congress to prohibit by interstate commercial regulations the sale of prison-made goods outside the State where they were made is as unnecessary as it is unwise under the operation of the "State's-use" plan unanimously proposed by the Commission. Such a prohibition is contrary to public policy, for the diversities of natural advantages will force different States into varied productions which are likely to be in excess of their own wants, and which may be more

economically purchased from them, than made by other States. There should be no restriction upon the inter-state exchanges of prison-made goods, if a profitable employment of all the prisoners in the country is to be promoted. It is only necessary to exclude the goods from the market, and confine them to the supply of State and public wants, to sale at fair and market prices to and by the public officials, in order to secure the least possible interference with prices and wages outside. Indeed, it is probable that only in this way, by a free inter-state exchange, can a sufficient permanent market be secured for the constant employment of all prisoners, and the "State use" plan thereby made successful.

Under unhampered and natural conditions, the "State use" plan offers the best solution of the prison-labor question which has so far been proposed. It is likely to be satisfactory so long as the demand equals the supply of products. It may be expected that a more intelligent treatment of the criminal class by the State will reduce its numbers, and consequently its products, *pari passu* with the decreased demand which is to be expected by the permanent supply of many of the needs of public institutions. It will be satisfactory to the public mind, because it relieves the people from taxation for the support of its prisoners, and also for the expenses of other public institutions, to the extent of the value of the labor of its able-bodied criminals. It will permit the greatest possible diversity

of employment and training in trades of prisoners, and afford the thoughtful and conscientious the satisfaction of feeling that they are contributing by their enforced labor to the welfare of the society which they have wronged, and so are expiating to that extent their crimes. It will thus aid in reformation, and accomplish the best possible result towards the transformation of the criminal into an honest and self-supporting citizen. It will supply public offices and institutions with honest goods, for there will be no object in cheapening the product by the use of inferior material or workmanship. It will prevent the temptation of public purchasing officers by bribes and corruption in the competition of manufacturers, a fruitful means of their degradation. It will enable the State to derive the greatest pecuniary relief and benefit from the employment of its prisoners. These reformatory and economic advantages greatly exceed all possible objections which have yet been discovered to the "State use" system, and warrant its general adoption in all prisons where convicts can be usefully employed in productive work inside their walls. In sections of the country where circumstances favor agricultural employment, land may be cultivated by those who can be controlled, not only to raise crops for the table of the prisoners but also for sale, and the products of agriculture which cannot be used in the prisons, could be sold for the public treasury.

Scientific Penology however requires the collec-

tion of all the incorrigible and long-time convicts into penitentiaries by themselves, where the machinery, power, and facilities for the manufacture of office, prison, hospital, school and armory furniture, tin-ware, crockery, cotton and woollen cloth for the inmates of all public institutions and for the uniforms of the militia, blankets, clothing, under-clothing, shoes and stockings, hats and caps, can be advantageously set up and employed. Much of the State printing can also be done by prisoners, especially blanks and forms of all kinds for the various departments and for the militia.

Where extensive fortifications are to be constructed on islands and promontories, or river and harbor improvements made, requiring a considerable time and a large number of laborers, and the location is favorable for guarding them, convicts may be employed; so, also, in the draining of swamp lands, and in the reclamation of arid wastes by the construction of reservoirs and irrigation canals in uninhabited sections of the country, the government could employ large numbers of these life convicts, the majority of whom are only fit for manual labor. Thus the people would secure these valuable improvements at the least cost, and maintain the convicts without any appreciable competition with free labor. Certainly all United States prisoners should be so employed. State prisoners should be turned over to the charge of the National Government, for such purposes, and the State in this way be entirely relieved of their support, while the

cost to the nation would be only the cost of maintaining the workers. By such measures economical employment can be provided for about half the prisoners which the public is obliged to support.

The short term convicts, in jails and in reformatories, however, cannot be expected to contribute very largely to their own maintenance. The labor of prisoners in reformatories must necessarily be in the main instructive and non-productive. Its economical object is the production of good citizenship, and not goods. Most of the prisoner's time must be occupied in learning how to do profitable work, and in acquiring skill at trades. Society aims to derive its reward from their training by reducing the numbers of the predatory criminal class, and transferring them into the class of independent producers. They may, as they acquire skill and approach release, be able to contribute somewhat by their labor to reduce the cost of their training and maintenance, if this is wisely directed to the care of the reformatory, the cultivation of farms, and the making of tools and various supplies; but such labor will have little influence beyond themselves, and their immediate surroundings. It is a negligible item in this discussion.

Industrial schools, inebriate asylums, and prostitute homes are in the same category as reformatories, with respect to the employment of their inmates. This is primarily therapeutic and educational with them also. Productive labor is essential in them for sanitary and economical reasons, but it

will not be productive of much profit. Those confined on long terms in inebriate asylums should be compelled to labor regularly, and in general will be able to do so profitably. Agriculture and garden work, and such hand work as can be done without a large expenditure for power and machinery, should be provided for them, in order to enable them to earn all that is possible while undergoing treatment.

Statistics show that 23 per cent. or probably, on an average, it may be said that 25 per cent. of the prisoners of society at any one time, are held by it—on short-term sentences in jails and city prisons—in complete idleness. Over 55 per cent. of the 25,701 prisoners committed to jails and houses of correction in the State of Massachusetts during the year ending September 30, 1899,¹ had been previously committed from one to over fifty times. If the same ratio prevails throughout the country, and we assume a present prison population of 100,000, the jail population averages 25,000. Of these 13,750 would be recommitments, and 11,250 first commitments, at any one date. Assuming an average term of sixty days, there would be an annual average of six times the first commitment, or 67,500 different persons committed during the year, in addition to the 13,750 recidivists or rounders, making a total of 81,250 different persons held in jail during a year, which is $81\frac{1}{4}$ per cent. of the total number of prisoners in confinement at any one time.

¹ *Report of the Commissioners of Prisons of Massachusetts, 1900.*

This is an approximately accurate estimate of the compulsory attendance which our present vicious penal laws enforce in these "schools of crime and hotbeds of corruption." 67,500 persons with criminal disposition are annually thrust into confinement and association with 13,750 confirmed, corrupt, and expert criminals, and then, after being allowed to ferment with them in idleness for sixty days, are turned loose to wreak their ravage on society. If there is a constant increase of the criminal class, and of the social burden of crime, the society which persists in such an utterly inexcusable folly is responsible for it. The wonder is that the increase is not greater, notwithstanding the tremendous and expensive efforts constantly made at the wrong end for its repression.

Science proposes a rational and adequate remedy for this great evil, by the substitution of fines and labor under official surveillance as the penalty for all minor crimes, instead of short-term imprisonments in jails. This course will at once solve the problem of prison labor for the remaining 25 per cent. of prisoners, by opening up all the opportunities for employment which exist outside the prison under ordinary conditions and terms. It retains one quarter of all prisoners in their natural and usual relations with outside labor; it opens up to the prisoner every existing variety of employment; it relieves the public from the cost of his maintenance in idleness, and the support of jails and officials; it enables the convict to make retribution by

labor for his offense, and to contribute somewhat, if necessary, to the support of dependent relatives ; it replenishes the public treasury, by the fines earned, instead of depleting it ; and, most important of all, it enables the State, through the kindly ministrations of its probation officer, to lead the offender back to a life of honest industry, instead of forcing him into a life of criminality.

Most of the public work in cities and towns should be done by their prisoners ; vagrants, tramps, and drunkards, who will not be restrained by fines, should make the roads and streets, and keep them clean. The cleaning of public buildings and the work in parks and public places would furnish employment for many. If the number were greater than needed for the usual public work, desired improvements might be made. In this way the public would be relieved of a double expense, that of maintaining the prisoner, and of paying others for the work he does. There is no rational excuse for dirty and neglected streets, and full jails and prisons, at the same time. With proper management there would be no great danger that the prisoners would escape. A canvas uniform over their clothes would remove some of the public and personal objections to street work, and tend to prevent escapes ; which, however, would seldom be attempted by prisoners on probation and not confined, if incarceration be the alternative.

The scheme of prison labor which the science of penology proposes then, is, *profitable production of*

materials for public institutions unhampered by restrictions, in penitentiaries and prisons : strictly educational work in reformatories, and general public work without imprisonment for short-term convicts.

But a duty also imperatively devolves upon the community quite as important as the making of wise laws, but even less recognized by the public : the self-protective, philanthropic duty of aiding the prisoner at large, and, when discharged from dur-
ance, to rehabilitate himself as a self-supporting member of free society. Society may turn the cold shoulder to the released prisoner or extend a hand of welcome and assistance. According to its attitude will all the time, pains, and expense expended in his reformation be wasted by driving him back to crime for a living, or saved by timely help. Self interest and Christianity both require extraordinary effort and self-sacrifice on the part of the public, to establish in honest self-support the released prisoner who brings a good recommendation from his warden. This is a corollary which seems to follow from every phase of the subject.

CHAPTER XV.

THE INSTALLATION AND ADMINISTRATION OF PENAL AND REFORMATORY INSTITUTIONS.

The Kinds of Institutions Enumerated—Police Stations—Workhouses—County Jails—Who Should be Committed to Jail—Location and Construction of—Industrial Schools—For Boys—For Girls—Reformatories—Administration—Female Reformatories—Inebriate Asylums—Criminal Insane Asylums—Penitentiaries—Location—Accommodations—Discipline—Corporal Punishment—Dietary—The Wardens—Prison Laboratories—Summary.

THERE are eight different kinds of institutions for the confinement of violators of the law required in the social war against the criminal class. Two of them, where prisoners are held by local authorities, are necessarily under local or municipal control. They are *police stations*, for the custody of the arrested who cannot be immediately disposed of by a magistrate; and *workhouses*, where drunkards, prostitutes, vagrants, beggars, and tramps can be temporarily restrained, punished, and made to earn the cost of their arrest and detention.

The other six must be entirely under State control, because in them prisoners are confined under the laws of the State. They are:

First: Jails, for the confinement of prisoners awaiting trial.

Second : Industrial schools, for misdemeanants of school age.

Third : Reformatories.

Fourth : Asylums for inebriates, and for prostitutes.

Fifth : Hospital prisons for the criminal insane, and insane convicts.

Sixth : Penitentiaries for the incorrigible, and those sentenced for life.

Police Stations should be conveniently located near the centre of each district or precinct. They should be provided with a general office, private offices for the captain, the probation officer, and the matron, with a day-room, and a dormitory sufficient for all officers on duty ; and with separated cells for the confinement of male and female prisoners, of such number that not more than one prisoner shall ever be confined in each. Steel-plate cells with proper heating, ventilating, and toilet arrangements are the most approved style of cell construction, both for economy and safety, and are readily adapted to all varieties of requirements. Every police headquarters station should be supplied with a Bertillon outfit for measurement and identification and a well-instructed official in charge of it. District centres for the local collection of Bertillon cards of signalment or identification should be established in New York, Chicago, Kansas City, Denver, Portland, Ore., San Francisco, Fort Worth, Tex., and Atlanta, Ga. All town and city police headquarters should arrange

with the most convenient of these for an interchange of the cards of the "suspects" who may be arrested. The signalments of all important criminals should be forwarded to these district centres immediately upon their arrest, so that telegraphic information can be received from them in time to be used when the prisoner is brought before the magistrate. These district centres should interchange cards with the national bureau of identification in Washington, when necessary or desirable, in order to secure the complete identification of all the criminal class. By such a plan many dangerous criminals would be caught and confined for the perpetration of minor crimes, and so their more serious depredations would often be prevented. The facilities which our railroads afford to criminals for rapid raids upon cities and towns where they are personally unknown would also be greatly diminished by such an extension of the sphere of influence of these central stations. It would to a certain degree extend police protection against professional criminals over the whole country.

Workhouses.—In all centres of population infested by drunkards, prostitutes, vagrants, tramps, and beggars in greater number than can be economically cared for and employed at useful labor while lodged in the police station, workhouses should be established. They should be located conveniently near police headquarters, in suburbs where some land can be cultivated by the prisoners, and other work done for the public benefit.

such as making roads, gardening, repairing and cleaning streets, working in parks and on public improvements of all kinds, making clothes for prisoners, and in whatever industries can be advantageously carried on in the locality. Police magistrates should commit to workhouses all those who cannot be punished by fine, or released on probation. As this class of prisoners is of a uniformly low grade, there will be no necessity for separate cells or treatment, and congregate lodgings and eating arrangements can be permitted. But an absolute and complete separation of the sexes must be maintained, if both sexes are confined in the same institution. Regular and constant work for every prisoner according to his ability is the vital necessity, both because work is the most obnoxious and dreaded punishment of this class, and for economical reasons. The workhouse, therefore, must be under the management of a superintendent of experience, who has the ability to provide employment for all his prisoners. Failure to work all prisoners and to make the workhouse self-supporting, or a very light burden to his community, should cause the immediate removal of the superintendent, but so long as he accomplishes this object his tenure of office should be secure.

County Jails.—Every judicial district requires a suitable jail for the secure confinement of prisoners awaiting trial, and detained witnesses. But no convicted person who has been adjudged after

trial tainted with the disease of criminality should ever be incarcerated among those who are, in the eye of the law, presumed innocent until they have been found guilty. The promiscuous herding in jails of prisoners of both sexes, all ages, innocent and guilty, and of all degrees of criminality, not only nullifies the usefulness of criminal laws ; it also propagates criminals, and maintains the malignity of the criminal class. It is this practice which has caused the universal condemnation of county jails. It is a perversion of their original and legitimate purpose, to which sound Penology demands an immediate return. A pernicious and direful experience has demonstrated that it is quite impracticable to use jails as penal institutions. They are necessary for the safe custody of dangerous criminals before trial, but such confinement, the law prescribes, shall be as brief as possible. Every accused person is entitled to a speedy trial. As it is manifestly impossible to adapt the jail and its discipline advantageously to both the guilty and the presumably innocent, the convict must be kept out. The correction of this great evil, therefore, is within the power of the judges without further legislation. The judges must be held responsible for its continuation. They ought never to allow a convicted felon to be returned to the jail. If jails are restricted to untried prisoners, the problem is greatly simplified, and can be relieved of many perplexing elements. As untried prisoners cannot justly be compelled to work, except within the

walls and for their own comfort and maintenance, the prison labor question settles itself for jails. If no profitable industry can be conducted in them, there is less necessity for experienced wardens, and their management may continue in the hands of the sheriffs, who are properly held responsible by the laws for the custody of prisoners. A few plain regulations will secure the best administration practicable, and remove the well-founded objections to existing methods.

No convict should ever be sentenced to a jail ; nor should any minor under school age ; nor any insane, imbecile, epileptic, crippled, or diseased person ; nor any one for whom a special asylum or hospital exists.

Only one prisoner should be allowed to occupy a cell, and he should never be permitted to communicate with or be seen by any other prisoner by whom he might be afterwards recognized and annoyed.

Male and female prisoners should be kept in entirely separated departments, out of sight and sound of one another.

No visitors should be permitted in jails except the members of a prisoner's immediate family at infrequent periods, and his legal and religious counsel.

Ample outdoor daily exercise, weekly baths, plain food, books, but no newspapers, should be provided. The prisoner should be treated as a suspected, but not as a guilty person, and allowed whatever extra comforts he is able to pay for under

the necessary sanitary restrictions. It is the duty of the State to preserve his physical, mental, and moral health unimpaired by confinement.

Jails should be located with a due regard to the convenience of the courts, and to economy of administration. The modern steel-cell construction is the best adapted to most localities. They should be under the entire control and regulation of the State commissioner of prisons, who should have authority over the sheriff to this extent. Such is the quick and easy remedy which science proposes for one of the greatest, most expensive, and most pernicious faults of existing criminal court practice.

Industrial Schools are the primary department of criminal reformation. They should be established by the State, and be of such size, and in such localities, as will accommodate conveniently all its unmanageable and delinquent children of school age. They should be built and maintained by the State, and managed by a board of trustees appointed by the Governor, by and with the advice and consent of the Senate. They should be under its educational department, in connection with its penal department, so that graduates may be either discharged into social freedom, or passed on into reformatories, according to the fitness or requirements of the individual. They should be built on good farming land, which can be cultivated by the pupils, to decrease the cost of maintenance, and to afford opportunity for outdoor agricultural employment, for both hygienic and educational reasons. They

should be constructed on the cottage plan, in order to permit the necessary subdivision and classification of the pupils according to age, capacity, and natural or acquired character or disposition, and to secure, so far as is possible in a public institution, a family life. Each cottage should accommodate not over fifty pupils with their matron and teachers, and contain schoolrooms and dormitories. A pleasant outdoor playground, a gymnasium for indoor exercise, shops for industrial training, and a chapel for religious and literary exercises are necessities of the institution. The general design should be for educational rather than reformatory purposes, without walls or prison features, and the school should be named in honor of some distinguished person in order to avoid as much as possible any stigma of the prison.

Schools for boys should be located in a different section of the State from those for girls. Both should be designed to train the children for useful, self-supporting lives, and to promote development in the three elements of character. To them magistrates should commit all arrested children who cannot be trusted at liberty on probation, or who have no homes or proper parental care, under an indeterminate sentence. Inmates who pass through the upper grades, or reach the age of sixteen, without giving satisfactory evidence of their fitness for an honest social life, should be transferred to a reformatory.

Reformatories should also be built, maintained,

and governed by the State, through its commissioner of prisons. They ought to be situated in healthy localities, with a bountiful supply of good water, and adequate drainage and sewage system. Much of the work of construction can be done by the prisoners. The location should be convenient of access from the large centres of population, in order to reduce transportation charges. The reformatory grounds must be spacious, and enclosed by a wall to secure the prisoners. Within this enclosure there should be separate cell accommodations for every prisoner, arranged for their necessary classification and the separation of the various classes of criminals; workshops for instruction in trades; kitchens, store- and eating-rooms; school-rooms; chapel, gymnasium, hospital, baths, and drill-shed, besides the general offices and accommodation for the warden and his chiefs of departments, or staff. They must have sufficient capacity to receive all incorrigibles from the industrial schools, and all the convicted first offenders from all the courts of the State. As the object of reformation is the making of good citizens out of bad ones no expense should be spared in providing every approved device for promoting this result. The State cannot afford to be penurious in supplying means to accomplish this supremely important object.

The efficiency and success of the reformatory will be chiefly dependent upon the capacity and zeal of the superintendent. Unless he is thoroughly

inspired with the philanthropic spirit of the reformatory work, and has unbounded faith in the practical means adopted for carrying it on upon the subjects in his charge, combined with a high character, the most lavish expenditures and wisest plans will prove barren and unsatisfactory. No question of salary, nor any other obstacle which can be overcome, should prevent the securing and retention of the very highest talent for the management of an institution intended for the reformation of dangerous citizens. The welfare of the State and the salvation of these prisoners in this world and in eternity hang largely on the wisdom, skill, and earnestness of the superintendent. When an efficient superintendent has been found, he ought to be allowed the largest liberty of action and the unrestricted choice of his subordinates ; receive the cordial support of his managers, and be secure in the tenure of his office during successful administration. He needs to be assisted by medical, physical, industrial, mental, and moral directors, in charge of these several departments, and by a commissary or steward of the stores and diet, whom he should appoint, and for whose honesty and ability he should be responsible.

Reformatories for females should be situated in secluded country locations, and adapted to the peculiar requirements of the sex in reformation and employment. They should be managed entirely by women of approved ability and character. As many of the inmates will be unmarried mothers, it

will be advantageous to combine with the female reformatory the care of illegitimate, deserted, and orphan infants. This will afford congenial and suitable employment for many of the prisoners, to which they may be assigned by the matron, and thus assist in their reformation and instruction, while providing State care for this large class of dependents, now left to the vicissitudes of private charity. The orphanage should be constituted as a separate department, although within the enclosure of the reformatory. Commitments should be received from poor directors and the board of children's aid, as well as from courts.

The female reformatory will naturally become the asylum for prostitutes, to which all those arrested for street-walking and prostitution must be committed under the indeterminate sentence until they are cured, and honest employment has been secured for them. A separate department for them will be necessary in order to prevent further corruption of the character of others in a receptive condition, from the contagion of general criminal depravity which will occur if promiscuous intercourse should be allowed among the prisoners.

Inebriate Asylums.—Although the drunkard is an offender against the social welfare, depraved in character, deficient in self-control and will-power in respect to his particular fault, he is not necessarily, or indeed generally, when sober, of an otherwise criminal disposition. His confinement is necessary both for the protection of society against him and

for its own protection from himself. It should be rather hospital than prison confinement—a commitment until cured. The chief considerations, therefore, which ought to determine the location of the inebriate asylum are sanitary. It should be in a healthy, well-drained country, distant from cities and large towns, with a spacious enclosure, and plenty of land for farm and garden cultivation. It should be constructed more on the hospital than the prison idea, and present an attractive rather than a repulsive appearance. Escapes must be prevented more by persuasion than constraint. Two distinct departments are necessary, one for those who pay for their treatment, and the other for the indigent. In the first, such comforts and enjoyments as can be afforded should be furnished, with exercise, amusements, entertainments, and employments* which will conduce to health and contentment. The indigent must be employed in productive labor according to their various capacities, and a portion of their earnings from it, after defraying the cost of their treatment, should be credited to each for the use of dependent relatives, or their own future support.

The only restrictions necessary will be confinement to the asylum limits, obedience to asylum rules, abstinence from intoxicants, and useful work. If the latter is judiciously managed the asylum can be made largely self-supporting, and the public thus relieved from the immense burden imposed upon it by the existing absurd methods of dealing with

drunkards. To this end the asylum must be located and built with a view of conducting such industries as will be most productive and profitable. Work, the inculcation of the habit of regular useful work, moreover, is one of the most beneficial curative processes which can be applied to the drunkard.

The superintendent should be a medical expert in the disease of drunkenness, and have authority to decide upon the cure and discharge of prisoners. He must be allowed the selection and discharge of his chiefs of departments, and all the employees of the asylum. He should be held responsible for the custody of all the inmates, the success of his curative treatment, and the economy of his administration, with full discretionary authority and freedom of action, to secure the best results.

Criminal Insane Asylums.—These institutions ought to have the general plan of hospitals for the insane, with prison security in addition. In States where the number of criminal insane and insane convicts warrants a separate institution and organization, they ought to be distinct from both the ordinary hospital for the insane and the prison. They should be separate from the former to prevent any odium of criminal association from becoming connected with the general hospital, and to secure the more stringent discipline and perfect security necessary for the insane criminal; from the latter, because their proper management requires a professional alienist rather than a warden; and

because they must provide care for the unconvicted criminal insane, who cannot justly be sent to prison and stigmatized as convicts on an accusation of possibly a single act done in an insane and irresponsible condition. They must be so constructed as to secure complete separation of the sexes, as well as that of the wards of the insane convicts from those of the criminal insane, who are of a very different class. The wards must be of fire-proof construction, and not more than two stories high, with suitable exercising grounds, securely walled. A larger number of attendants and guards than is necessary either in the general hospital or prison will be required, both for the safety of the inmates and the prevention of escapes. Economy in construction and administration is especially important, as little productive labor, beyond the work of the institution, and in its garden and grounds, can be expected from this class of prisoners. The average duration of confinement is longer, and the expense of maintenance greater than in the penitentiary; although this expense need not be as great as in the general hospital. Adequate infirmaries are necessary because the proportion of physical disease and death is large in this class.

In the larger States, where the number of insane convicts is great enough to warrant an independent institution, a hospital for their sole treatment can be economically established within the walls of the penitentiary, and placed in charge of an alienist; and in such States a separate hospital

for the criminal insane who have not been convicted should be maintained.

Penitentiaries.—The penitentiary must absolutely, positively, and finally close the criminal career of every one who passes within its doors. When the State has exhausted its efforts of reformation, finds its mercy despised, and is compelled to decide that its prisoner is incorrigibly dangerous, he must be shut up there for the rest of his natural days ; and be compelled to make the best restitution he can by his labor to the society which he has abused and forced to support him. Murderers and all those gross culprits who have incurred life sentences, with the moral imbeciles and incorrigibles who graduate from the reformatories, constitute the population of the penitentiary. This is, then, the final shift of the incurable chronic criminal. Its prisoners in this respect are all of one degree of criminality,—they have passed beyond the danger of contamination ; there is no need for their separation, except for discipline and control. Their education is done ; nothing remains for the State to do but to hold them securely and work them profitably with humane but unrelenting firmness.

Security and economy are the controlling motives in the location, construction, and administration of the penitentiary. The location must, therefore, be convenient to the larger centres of population whence the prisoners are derived, where raw materials for manufacture are cheapest and

best procured, where the largest market exists for their products, and the price of supplies for maintenance is lowest. Natural advantages for manufactures and industries suitable to local circumstances ought to receive large consideration in deciding upon the location. Good drainage, a plentiful supply of pure water, and a dry, pure atmosphere are necessary to the health of the prisoners, which must be carefully protected, from motives both of humanity and economy. Strong and healthy prisoners cost less than sickly ones, and earn more.

The enclosure must be spacious for the proposed population, walled on all sides, and contain an administration building, cell houses, dining-rooms, a chapel, an amusement hall, workshops, spray-bathhouses, a gymnasium, and play and parade grounds. After a cell house has been built most of these accommodations can be constructed by the prisoners. As the prisoners are to spend the remainder of their lives there, they must be made reasonably comfortable in their quarters, clothing, and treatment; and made satisfied with a good, healthy, and wholesome diet. Cleanliness, neatness, and order in quarters, person, and at table must be scrupulously maintained by the prisoners and enforced by the warden. A full day's work must be exacted of every prisoner according to his ability and skill. While a strict and stern discipline is necessary, all cruelty of punishment and unnecessary severity should be avoided. All that

the State requires from the warden is safety from his wards, and the greatest possible relief from the burden of the cost of their confinement. All the penalty or punishment it exacts is the deprivation of liberty, and work for the public, and this will make the laws as efficacious in the restraint of the criminally disposed who are at liberty as it is possible to make them.

All prisoners must be made to understand that they are confined for the safety of society ; and that their own comfort and pleasure has been willfully forfeited by their acts.

No beneficial results, however, can be expected from unnecessary humiliations and requirements which tend to destroy any self-respect remaining in the character. The lock-step, prohibition of talking on all occasions, turning the head away in marching past, and some other ordinary prison rules are better enforced as disciplinary measures for bad deportment in the prison than as general rules. When convicts are first received, they should be bathed, shaved, have their hair cut, be clothed in the uniform of the intermediate grade, and have their Bertillon card and photograph taken. Having been assigned to the intermediate grade, it will be explained to them that they can obtain promotion to the first grade with increased privileges and comforts for good behavior ; and that they will be reduced to the lower grade, where the privileges and comforts are less and the discipline more strict and disagreeable, for bad

behavior. Each grade should have its special uniform, and be subdivided into classes according to similarity of character and ability to work.

Corporal punishments are prohibited in some States, and ought not to be generally used, but there are always some convicts so entirely devoid of moral sense and reason that it is impossible to govern them except by fear of pain; for such, spanking with the paddle of leather under the eye of the warden, and not until the next day after the offense, has been proved to be most fruitful of good results.

The prison diet should be plain and economical; but the food should be wholesome, nutritious, well cooked, neatly served, and of such variety as will best preserve the appetite. The quantity of the ration must be carefully apportioned to the maintenance of the health and strength of the several classes, and proper time allowed for eating it. Few single items in the discipline of prisons have a greater influence on the demeanor and conduct of the prisoners than the way in which they are fed. A spirit of discontent, insubordination, and rebellion is more easily fomented by the prevalence of an opinion that this almost solitary right remaining to them, the right of a healthy maintenance, is being unjustly impaired by the management, than in any other way.

The warden of a large penitentiary must needs be a man of strong personality and large experience and training. He will have to manage, with

a few assistants, a mass of the most uncontrollable and refractory elements of society. But few men are capable of discharging these duties with success. When a good warden has been discovered he should remain secure in his position, without fear of removal for any cause outside of his own management. He should combine ability to control his prisoners and to employ them to the public advantage; qualities that are not often found in conjunction. The objective purpose of the penitentiary is wholly economical. Its designs, appliances, conveniences, and administration ought all to subserve this end as entirely as in any industrial establishment constructed for profit, with free labor.

There should be regularly instituted in all penal and reformatory institutions a laboratory for the scientific study of criminology; of which the Bertillon system of identification should be a part. Whatever differences of opinion may exist concerning the comparative forces of heredity and environment in the production of criminals, no one denies that the criminal is a variation from the honest, sane, normal human being. In Europe, learned men like Lombroso and Ferri have made exhaustive anthropological and sociological investigations concerning many thousands of convicts, which afford almost our only data for the study of the disease of criminality in America, except those of Miss F. A. Kellor. Our social, religious, industrial, political, and climatic conditions are so very

different from the European, our population composed of such a unique and cosmopolitan commingling of races, that a novel type might naturally be expected to be developed ; and the existence of a great black race intermingled, but distinct, in our midst renders it absolutely necessary to an intelligent application of remedies that we should carefully study the disease as it is manifested here among our own people and in our own land. This subject has received the consideration of our penologists. A committee of the National Prison Association made this recommendation at the congress of 1900 :

“ A laboratory, furnished with the best modern instruments of precision, conducted by a specialist or trained observer, for the scientific study of prison populations, with special reference to special obvious needs of the administration in the discipline, instruction, and training of prisoners. These studies would be :—Physical : the anatomy and physiology of prisoners ; measurements of sensation and other manifestations of mind through the body ; and the hereditary factors. Psychical : the mental, emotional, voluntary life activities ; the tastes, ideas, knowledge, motives. Social : the domestic, industrial, neighborhood, legal, political, and religious environment which have influenced the character and conduct. We know that all these factors enter into every life and help to shape it, and that no one of them taken alone is sufficient for an explanation.” ¹

This recommendation was heartily and unanimously approved by the congress. Such laboratories could be conducted by the medical officer of the prison, after a few months of special training,

¹ “ Prison Laboratories,” Prof. C. R. Henderson, *American Journal of Sociology*, November, 1900.

and would greatly enlarge the field of his research and ambition, and assist much in his professional success. They would not be expensive for equipment, and would afford occupation for some of the better educated and more intelligent prisoners. The possible social value of a systematic, general, and continual examination of convicts all over the country, and of the statistics which would be reliably collected, can hardly be overestimated. These laboratories would also increase the accuracy and use of the Bertillon signalments, and assist in the identification of arrested suspects. They would contribute much toward establishing Penology as an exact science, and toward that accuracy of diagnosis which is essential to a successful system of therapeutics.

With these eight kinds of institutions, thus established and administered, and all the officials, constables, police, lawyers, probation officers, judges, and prison commissioners intelligently co-operating, the public contest with criminality will be conducted with the greatest economy, the numbers of the public enemies most rapidly reduced, and their active hostilities most effectually restrained. In order to achieve a complete and lasting triumph, it only remains for society to systematize its efforts upon scientific principles at the sources which constantly supply the unending stream of criminals who wage this war ; to substitute the " ounce of prevention " for the " pound of cure." We will now proceed to explain this system.

SECTION III.
HYGIENICS.

CHAPTER XVI.

POLICE PREVENTION. PROHIBITION OF THE MARRIAGE OF THE UNFIT.

Excessive Arrests—Proportion of Convictions to Arrests—Illustrated by Boston Statistics—Possible Saving—Municipal Police a Survival of Medieval Necessities—Has Become the Chief Instrument of Enforcing Law—Logically a State Force—Should Execute all Constabulary Functions—Its Use in Riots—Organization and Discipline—Relief of the Military—Other Advantages—Care over Children in Public Places—The Prohibition of the Marriage of the Unfit—Constitutional Power of the State—Heredity—The Contrast of the Edwards and the Jukes Families—Such Processes Constant—The Preventive Legislation Necessary—Advantages to be Secured.

THE number of transgressors detected and arrested by the officers of the law is enormously disproportionate both to the crimes committed and to the number convicted. It is probable that the number of arrests annually made in the United States is ten times greater than the number of persons sentenced to reformatory or penal institutions, although no person is ordinarily arrested unless there has been a violation of law of which it is reasonably certain he is guilty. Many of these arrests are of the same person for repetitions of the same offense; a large proportion of them are for minor offenses which do not incur imprisonment; but scarcely one in three even, of those ar-

rested for serious crimes, is convicted. Most of the energies of the police are expended in watching and placing under temporary restraint the "rounders" who habitually disturb public order whenever they are at liberty. This is not only a great waste of public money, unnecessarily occupying the time and attention which should be given to more important matters, but it discourages honest and vigilant officers from faithfully discharging their duty.

The police reports of the thirty-eight cities in the United States having a population in 1900 of over 100,000 each, a total of 14,208,603, show that there were 641,991 arrests made, but only 29,501 convictions for felonies in 1899, or during the year reported, which ended near the close of that year.¹ If the 121 other cities having over 25,000 inhabitants each, which have a population of 5,486,022, had the same ratio of arrests to their population and the same proportion of convictions to arrests, there were 889,890 arrests in the cities of this country and only 40,815 convictions for felonies. If we add to these totals ten per cent. for those arrested, and ten per cent. to the number convicted, upon the assumption that ninety per cent. of the total criminality comes from the city population, the total number of arrests in the United States during 1899 was 978,879; while the convictions for high crimes and felonies only numbered about 44,897. At the same average cost of \$50, for each

¹ See Appendix A.

arrest as obtained in Massachusetts during 1899,¹ these substantially barren arrests cost the people of this country \$46,700,000 in taxation during the year. But this largely needless waste of funds is much less than the indirect and consequential damages which this irrational treatment of criminals inflicts upon the people by its encouragement and cultivation of criminality. An arrest signifies that the proper official has discovered a case of crime and brought it before the magistrate. If the offense is a misdemeanor, or is drunkenness, a small fine and a sentence of a few days in jail are imposed, after which the patient resumes his former life with his reputation stained, his self-respect weakened, and some of the restraint which before surrounded him, lost. The short imprisonment has broken down his dread of jail, brought him into contact with many worse than himself and confirmed his moral depravity. He comes out worse than when he went in.

The relations between law and criminality in the United States are well illustrated by the records of the Police Department of the city of Boston, Mass. During 1899 the police of Boston arrested 39,760 offenders²; 23,875 of these were arrested for drunkenness, 9941 of whom were convicted; and 2708 for assault of various kinds, mostly due, probably, to intoxication, 1795 of whom were convicted. These two classes constituted 66.85 per

¹ See Chapter I., p. 11.

² *Report of Board of Police*, City of Boston, Dec., 1899.

cent. of the arrests, and 61.91 per cent. of the convictions. There were arrested for "simple larceny," 1741, of whom 1506 were convicted; for "violations of city ordinances," 1395, of whom 1170 were convicted; "suspicious persons," 1999, none convicted; "vagrants and tramps," 459, of whom 384 were convicted; "idle and disorderly persons," 614, of whom 182 were convicted; "neglected children," 178, and 129 convicted; "runaways," 192, and 4 convicted; "stubborn children," 137, and 129 convicted; "malicious mischief" and "trespass," 243, and 175 convicted; "offenses against the license laws," 383, and 243 convicted; other misdemeanors, 2001, and 891 convicted; a total of 9342, or 23.5 per cent. of the arrests, of whom 3642, or 39 per cent., were convicted, being 19.3 per cent. of the total convictions. The remaining 9.65 per cent. of arrests furnished 18.2 per cent. of the convictions, and included those charged with "offenses against the person," 199, of whom 77 were convicted; "offenses against property, with violence," 675, of whom 234 were convicted; "offenses against property, without violence," 915, of whom 503 were convicted; "arson," 19, of whom none were convicted; "forgery and offenses against the currency," 70, of whom 15 were convicted; "offenses against chastity and morality," 743, of whom 431 were convicted; "gambling," 1114, of whom 985 were convicted; a total of 3735, of whom 2245, or 60.4 per cent., were convicted. Of the total number of

arrests, 18,794, or 47.2 per cent., were convicted. Of those arrested, 12,921 persons, or 39.49 per cent., were fined \$113,897.91; and 2880 persons, or 7.2 per cent. of those arrested, were imprisoned for an aggregate of 1861 years and 7 months, involving the State in an expense of \$242,000 for prison costs, at the average cost of \$130 per year.¹ Only 5.9 per cent., or 2319, of those arrested were placed on probation. There were 157 different crimes or offenses charged against those arrested.

Assuming that fifty per cent. of the million of arrests (in round numbers) made annually in the United States were recidivists, the officers of the law would be relieved of one half their work, the trouble and danger of making a half-million arrests, society of half the cost of the criminal class, and most of its suffering and apprehension (since the recidivist commits most of the heinous crimes), by the permanent confinement of all this category, as scientific Penology requires. Josiah Flynt estimates that there are sixty thousand tramps alone in America, living without work, contributing to the social sense of insecurity and the necessity of police protection. There need not be one at large. The seclusion of recidivists and tramps could be very speedily accomplished. Relieved thus of the hardest half of its task, the police force might be very considerably reduced in numbers with safety. The remainder could be greatly improved in personnel by selection, and the stimulus of a higher

¹ *Massachusetts Prison Association Bulletin No. 12, p. 5.*

rate of pay, at a very great decrease of cost. Its attention could be chiefly directed to the prevention of crime, and the correction of the incipient tendencies of unrestrained children and youths towards those vicious and offensive practices which, unchecked, develop the criminal. The proper office and function of the police, indeed, is prevention rather than detection and arrest, which are popularly understood and interpreted by the force itself to be its special duties.

The municipal police force as it exists is the natural product of the peculiar necessities of the primary social organization into cities. It is an outgrowth and development of the ancient "night watch," organized by citizens for local protection. Having everywhere a local origin and organization, antedating general government, it has maintained its municipal character and independence of the State, while the recent tremendous concentration of population and property in cities has made these local organizations the principal executive agencies for the enforcement of the criminal laws of the State. We have stated before that ninety per cent. of the crime is committed, and ninety per cent. of the criminals are arrested in cities. By the logic of civilization and the science of Penology, the municipal police force is recognized as the actual hand of the law which the State lays on those who violate it, or endanger the social welfare. It has become the immediate ostensible representative of government among

the people. Its uniform and authority are respected and obeyed as the local power of law. Indeed, recent immigrants who come from lands where only "the man in uniform" represents the State, and who compose a large proportion of our dangerous class, pay small heed to any officer except a policeman.

The time has arrived in this country when it is necessary for the lawmaking power to assume the command and control of this principal means of its execution. The municipal police must be made legally what it is logically, and in fact, a force of the State. Intelligently organized by a general law distributing its numbers according to the density and needs of various communities, both the economy and efficiency of its maintenance would be remarkably increased. Such an organization would afford the State a rational and complete means of enforcing law in all parts of its territory with uniformity of execution. It would enable the State to bring the whole of its power to bear with an equal pressure upon all of the hostile elements within its borders, and extend its influence into every department of social life. The hand of the governor would be seen and, if necessary, felt everywhere. This is the simplest way to enable him to discharge the duty of faithfully executing all the law in all his domain, which is imposed upon his office, and he could be held responsible for all failures. Friction and conflict between local and State authority would cease,

and a harmonious process of executive functions proceed through all ranks of authority, from its head down to the private citizen.

Upon a State police could be devolved the functions and duties of constables. Thus the very grievous abuses which have gathered about this antique relic of early civilization might be at once abated. The election, through the political influence of law-breakers, of corrupt and venal constables for the purpose of securing immunity and license would cease; and the abolition of the pernicious fee system, by which they are now supported, would follow. The military discipline required in such a force would assure honest and correct reports to the courts, instead of the perjured statements now so commonly made by constables, and the people would no longer be harrassed by arrests upon frivolous pretexts for the sake of the fees. Members of the force could be detailed by the local commander to the various magistrates to perform the duties of constables.

In case of tumult and riot a well drilled and uniformed force could be speedily concentrated for its repression. Railroads, telegraphs, and telephones ought to be used by the State for the purposes of government as freely as they are availed of by the criminal and lawless elements of society. These have rendered obsolete many of the legal institutions which were inaugurated before such facilities of intercommunication and rapid transit were known. The constable and the *posse comitatus* are among

the most notable of them. Consolidation of conflicting interests, concentration of control, and simplicity of organization are now as essential to good government as to successful business operations.

A State police force should be organized in squads, platoons, companies, battalions, regiments, brigades, and if necessary, a division; with non-commissioned and commissioned officers corresponding in rank and pay to those of similar commands in the United States Army. The policeman should be selected after thorough examination as to physical and moral qualifications and intelligence; according to rules prescribed by law; appointed for life during good behavior; retired on a pension, as from the army, at sixty-five years of age; and made secure from removal except after trial and condemnation by a court. Appointments should be made from every county and civil subdivision according to population. Subdivisions of the force ought to be assigned to the several communities, according to their needs, and subjected to the orders of mayors and the civil authorities, through their intermediate commanders acting as chiefs of police. Promotions of officers should be made by the governor, after prescribed examinations, upon the recommendation of intermediate commanders. The organization and discipline must be on the military plan. The whole force might be massed in camp by brigade or regiments once a year for a week or ten days, for drill and exercise. The rural policeman should be

mounted, and be provided with suitable telephone connections at his station. He would thus be able to guard a considerable district and abate the pest of summer tramps. When concentrated they should be exercised as cavalry; their officers and uniforms ought to be assimilated to the cavalry arm of the military service. In large cities where several battalions are required, one or more of them might be armed with rifles, and be drilled in their use, to prepare them for employment in the dispersion of mobs, and the suppression of riots.

Such a police force would be a much more natural and economical means of preserving order during labor strikes than the State military can be. Its use for such purposes would require no extraordinary measures nor arouse special resentment among strikers. On the contrary, it would so impress the community with the ability of the civil authorities to enforce obedience to law instantly, without the aid of the military, that attempts to override law and consolidated authority would soon cease. The inordinate expense attending a sudden mobilization of an unnecessarily large body of the State troops for such purposes, as is usually done, would be saved to the taxpayers; and incidentally an exceedingly important advantage conferred upon the military organization by the complete obliteration of the chief cause of the very unreasonable but still detrimental hostility which the labor unions evince toward the National Guard. The members of these unions, on the contrary, ought from patriotic

motives, and on account of their numbers, to constitute the main strength of the military arm of the State, and to take great pride and pleasure in it.

The State police would moreover open up to men of military tastes and special ability, a new and agreeable profession for life, possessing a sufficient stimulus to ambitious effort for promotion. This body would be kept in continual semi-military training, and under full military discipline, which is the main element of soldierly efficiency, thus maintaining a very valuable resource for the supply of officers when large bodies of troops might be required suddenly in national emergencies. The Seventh Regiment of New York furnished over eight hundred officers to the northern armies during the Civil War. A well drilled police in all our States would in a similar manner add a great reinforcement to our national power, in the occurrence of war.

After achieving the confinement of all the identified criminal class, the social utility of a State police during times of peace would chiefly consist, however, in its disposition and ability to watch and control the children and youth of cities when they are on the streets and in public places. Children as a general rule do not fall into vicious or criminal practices at home under the parental oversight, or while visiting good companions in their homes. It is on the street and in places where restraints are removed and it is thought no acquaintance will

observe or report, which are the resort of those who would not be received into good homes,—the depraved, the vicious, and the criminal,—where the tempter plies his arts, that evil associations are formed, the barriers of honesty and virtue undermined by insensible degrees and finally broken down. These are the fields of operation of the corruptors of youth, which afford opportunity for the first secret steps in vice and crime ; where “Oft the sight of means to do ill deeds make ill deeds done”¹ ; where the juvenile offender is found ; where children are degraded into drunkards, prostitutes, and criminals ; where most of the recruits for the criminal class are seduced and enlisted. If the State will supply the parental supervision which is lacking in the places under its sole care, as it should, and by such a completion of its jurisdiction could do, it will apply a potent social preventive against the dissemination of criminal disease at one of its main sources. A word of caution or advice, a recognition or warning from a reputable and respected representative of government, fitly spoken at a critical period in child life would often be the most effective deterrent in the range of possibilities. It is vastly more important in this department of Penology than in any other that the State should avert and not await the overt act. It is far easier and cheaper to check the first attack of criminality than to correct criminal habit, or cure the well developed disease.

¹ Shakespeare, *King John*, act iv., scene 2.

The Constitution of a State police, devoid of partisanship and political control or influence, would speedily insure such a reliable and efficient personnel as not only to compel a general obedience to law, but be competent to discharge the supreme parental functions of government in full supplement of natural failure. Its duties would include the rescue of abandoned, abused, defective, delinquent, and truant children ; assistance in the execution of school laws ; the surveillance of probationers ; enforcing the prohibition of child labor ; sanitary regulations ; the discovery and relief of the uncared-for sick or destitute, and the general promotion of social welfare. It would bring the State into direct personal contact and relation with every individual of the population.

A State police force is the first general preventive prescription of scientific Penology. The principal efficacy of this law will appear in the reduction of the number of criminals produced by bad environment. Although there should be no doubt as to the power of the legislature to assume the organization and control of all the police within its jurisdiction under its constitutional obligation to protect and promote public welfare, there has been much opposition to this proposition. The question has been repeatedly adjudicated in State and United States courts and the principle affirmed.¹

¹ The following citations are quoted from Professor William H. Allen, U. of P., *Annals of American Academy of Political and Social Science*, January, 1901, p. 101.

1. "A Municipal Corporation . . . is but a department of the State."—

To prevent and restrict the increase of the other main subdivision of the criminal class, the product of heredity, our science has elucidated, even more positively, a second general prescription : *That the marriage or cohabitation of idiots, weak-minded, insane, epileptics, criminals, inebriates, the scrofulous, tuberculous, leprous, and the venereal diseased, must be absolutely prohibited.* The importance of this prohibition is not limited to Penology, but extends through the whole sphere of sociology ; for the progeny of all these diseased individuals inherit not only criminality, but many other defects and diseases dangerous and burdensome to society. Its incorporation into the legal code would therefore not only shut off the great supply of hereditary or instinctive criminals, but very sensibly reduce the social burden of disease and pauperism. The opposition of legislators, sometimes possibly from personal reasons, as well as a natural reluctance to interfere with misconceived ideas concerning personal liberty and rights, have, notwithstanding its supreme social value, so far prevented its legislative enactment.

The constitutional power of the State to regulate marriage by law ; to prohibit the marriage of the

Barnes *vs.* District of Columbia, 91 U. S., 544 ; Mt. Pleasant *vs.* Beckwith, 100 U. S., 524 ; Williams *vs.* Eggleston, 170 U. S., 310 ; Metropolitan R. R. Co. *vs.* District of Columbia, 132 U. S., 8.

2. " The police perform State functions and are State agencies and instrumentalities."—Burch *vs.* Hardwick, 30 Grattan (Va.), 34 ; Chicago *vs.* Wright, 69 Illinois, 326 ; Cobb *vs.* City of Portland, 35 Maine, 383 ; Kelly, Administrator, *vs.* Cook, Supreme Court Rhode Island, October 27, 1898 ; General Laws, Rhode Island, chap. ciii., section 17 ; Beer Company *vs.* Massachusetts, 97 U. S., 25-33."

insane, and of minors without the consent of guardians ; to annul marriage for crime, and such other reasons as it might specify ; to compel all proposing marriage to first obtain the consent and license of the State ; to enforce the registration of marriages, births, and deaths, is established and recognized as a proper function of government. Its power and duty to legislate for the promotion of the public welfare in every direction according to its wisdom, whatever restrictions are thereby imposed upon individual freedom of action, is generally acknowledged and judicially affirmed. Its supreme authority over the life, liberty, property, and persons of all its citizens, and its power to regulate their actions so as to insure the general safety, health, and prosperity, is equally well established. There can be no constitutional or valid objection to whatever regulation of marriage the public welfare requires. Neither is there any rational excuse for governmental neglect to guard this supreme function of the citizen—the most important act in life, both to the individual and the State—with the highest wisdom and care. The happiness and welfare of every citizen, the public prosperity, the strength, nay even the very perpetuity of the State, depend more upon safeguarding the marriage relation than upon any other single act of government. It is surprising to the intelligent mind that the social organization has left this unique and fundamental social proceeding so frightfully unregulated and dangerous. There is no legislation so

urgently required as the enactment of this law of Penology.

The law of heredity that "like begets like," the fruit is true to the tree, that similar causes produce similar results, however it is formulated, is universal and invariable in all nature; organic and inorganic, vegetable and animal. Tree and flower, fish, flesh, and fowl retain the integrity of their species in endless generation. Mankind not only always reproduces mankind, but preserves its distinctive classification into white, black, red, and yellow races, as well as its national, tribal, and family characteristics and peculiarities. The family of Israel maintains its identity in every clime and among every people under the sun. Each human family resemblance persists from generation to generation so long as it survives, sufficient for its identification. Science, history, and personal observation constitute absolute knowledge that every child will be moulded by Nature on the pattern of its parents. The medical profession and penologists have published abundant evidence that certain parental diseases or defects, besides actual criminality, induce moral depravity in the offspring.¹ A recent comparison of the history of the Jukes family with that of Jonathan Edwards² affords this impressive illustrative contrast between the heritage of good and bad parentage, during substantially the same 175 years of the same American environment.

¹ See Dr. McKim, *Heredity and Human Progress*; Dr. Strahan, *Marriage*.

² *Jukes—Edwards*, A. E. Winship, Litt. D.

Jonathan Edwards, born East Windsor, Conn.,
in 1703 :

1394 of his descendants were identified in 1900 ;
of whom 295 were college graduates ;

13 presidents of our greatest colleges ;

65 professors in colleges, besides many principals of other important educational institutions ;

60 physicians, many of whom were eminent ;

100 and more clergymen, missionaries, or theological professors ;

75 were officers in the army and navy ;

60 prominent authors and writers, by whom 135 books of merit were written and published and 18 important periodicals edited ;

33 American States and several foreign countries and 92 American cities and many foreign cities have profited by the beneficent influence of their eminent activity ;

100 and more were lawyers, of whom 1 was our most eminent professor of law ;

30 were judges ;

80 had held public office, of whom 1 was vice-president of the United States ;

3 were United States senators ;

Several were governors, members of Congress, framers of State constitutions, mayors of cities, and ministers to foreign courts ;

1 was president of the Pacific Mail Steamship Company ;

15 railroads, many banks, insurance companies,

and large industrial enterprises have been indebted to their management ;

Almost if not every department of social progress and of the public weal has felt the impulse of this healthy and long-lived family. Penology and prison management have occupied their attention and been improved by its members. It is not known that any one of them was ever convicted of crime.

“ Max,” the progenitor of “ the Jukes,” was born in 1720. He was a drunkard who would not work ; about whom little else is known.

Of his descendants 1200 were identified as having been occupants of penal and charitable institutions, previous to 1874 ; none of whom were ever elected to office, served in the army or navy, or contributed anything to the public welfare ; but on the contrary they cost society over \$1000 each ; or a total of \$1,250,000 ;

310 were in poorhouses, 2300 years in all ;

300, or over one in four, died in childhood ;

440 were viciously diseased ;

400 physically wrecked early by their own wickedness ;

50 were notorious prostitutes ;

7 were murderers ;

60 habitual thieves, who spent an average of 12 years each in prison ;

130 were convicted more or less often of crimes.¹

¹ *The Jukes. Dugdale*, pp. 68-70.

The Jukes family never mingled any good blood with its own. The Edwards family has instinctively protected its blood from degeneration by careful and prudent marriages. The Jukes family is fortunately becoming extinct; although "the mills of the gods grind slow." The Edwards family bless the world with numerous children. If the record of the female side of the house could be collected the contrast would doubtless be doubled. It is impossible to compute, almost so to overestimate, the value of such citizens to the State.

These two columns of statistics are actual facts; which by themselves, unsupported by the mass of other existing evidence, give sufficient warrant for legislative regulation of marriage. The processes of these two families run incessant through the whole social fabric. In America, the absence of caste and class exclusiveness, encouraging freedom of social intercourse, fairly invites the subtle microbe of degeneracy to infect all ranks and conditions, and render legislation especially necessary. No family can be safe while the currents of intermarriage spread without let or hindrance over the whole people. The ferment of immorality and disease will naturally burrow upward and diffuse itself eccentrically until all are contaminated, and the nation becomes enfeebled and degenerate. Restrictive legislation, allowing the marriage of sound and healthy persons only, together with the legal condemnation of prostitution as criminal,

would promote virtue and continence in youth, when illicit intercourse almost always begins and vicious diseases are mostly acquired, but when, also, the hope of a happy, virtuous marriage is the controlling motive of life among all the respectable and intelligent. Thus the social evil would be diminished by such a popular pronouncement. It is certainly growing under present conditions. Physicians say, also, that venereal diseases are becoming frightfully common among boys at school.

The legislation required need not be either complicated or difficult of execution. There should be an absolute prohibition of the marriage or cohabitation of the defectives and diseased specified, under penalty of castration or spaying ; and of females under twenty and of males under twenty-five ; the law should require a license to be procured, and that a sworn certificate from the family or some reputable physician shall accompany every application for a marriage license, specifying that neither of the parties to the proposed union nor their parents belong to the prohibited classes, and that both, if of child-bearing age, are sound, healthy, and fit to produce healthy children. The giving of a false certificate should cancel a physician's right to practise his profession.¹ It is well known that immature parents under the ages stated are as incapable of generating robust children as they are of nurturing and training, and generally of supporting them after they are born. If immature

¹ *Prisoners and Paupers*, p. 286 *et seq.*

marriages are prohibited by law, a wiser selection of mates will prevent many unhappy marriages, and so greatly reduce the growing evils of divorce, which are assuming alarming proportions in society.

An intelligent, reliable, and efficient State police, managed from the seat of government, and extended over the entire territory of the State, and a wise legislative regulation of the marriage relation, are the two great and imperative prescriptions for the prevention of crime. Until they have been administered and have operated, the social burden and contest will continue unabated.

CHAPTER XVII.

PRESUMPTIVE CRIMINALS: THE MINOR WARDS OF THE STATE—DEFECTIVE, DELINQUENT, NEG- LECTED, AND ABANDONED CHILDREN.

Necessity of State Care over all Children — Presumptive Criminals Source of Three Fourths of the Criminal Class — Training of Children Easier than Reformation of Criminals—The State alone Competent to Treat this Class—State Care not Necessarily Institutional—Modern Family Cottage Institutions—Authority of the State Superior to that of the Parent—The Subdivision of Minor Wards of the State for Treatment—Legal Prohibitions Needed — Juvenile Courts — State Boards of Children's Guardians — Their Duties and Powers— The Five Classes of State Juvenile Institutions—Truant Schools—Industrial Schools—State Children's Aid House—State Orphanages—Children's Hospitals—Five Kinds of Asylums Needed—Evils of State Subsidies to Private Institutions—Illustrated by Experiences in New York—Census of Children under Charitable Care—Results of Private Charity in Child Saving.

WE have explained in the preceding chapters the principles of Penology concerning social protection from the developed criminal class. When the State has organized its action in accordance with these principles, and executes its laws efficiently, crime will be restrained, criminality repressed, the criminal class continually disposed of as it exposes itself, and its numbers gradually reduced by preventing its reproduction. The process, however, will be interminable under existing social conditions if action is confined to caring for

the ripened fruit of criminality, and if the axe is not laid upon the root of the tree. The production of criminals, unfortunately, is not confined exclusively to the criminal class, but is a constant result of defective heredity, progressive degeneracy, and corrupting environments pervading the whole social organism. The supreme effort which will insure complete triumph must be centred upon the grandfathers of the succeeding generations in the tender and plastic years of their childhood. The future career of nearly every criminal is determined before he is past the school age. Thus the great duty of intelligent and conscientious parents is to rear and train their children for lives of honest, self-supporting citizenship. It devolves upon the State to provide the necessary facilities for such a training, to compel the universal employment of them by negligent parents, and to supply proper parental care when it is wanting. The State attempts the discharge of this duty by its public-school system and its compulsory education laws; an attempt which will be more fully considered in a subsequent chapter. We shall confine our attention here to the duties of the State to children who are without proper parental care; our fifth category of the criminal class,—Presumptive Criminals. Although this category constitutes a very insignificant proportion of the number of children in the population of this country it produces doubtless 75 per cent. of its criminals.¹ To nip in the bud

¹ *The Criminal*, Dr. Drähms, p. 286.

three fourths of the perennial crop of criminality would therefore save the country three fourths of all it now suffers from the criminal class in outrage and apprehension, besides the enormous annual pecuniary saving of \$450,000,000, if Dr. Eugene Smith's conservative estimate of the cost of crime to the country is correct.¹ This section of Penology is therefore by far the most important.

It would naturally seem, moreover, to be as much the easiest to accomplish as it is the most important. All that is necessary to secure this beneficent result is an intelligent and systematic provision by society of good parental care and training for this comparatively small number of its children. Over them at least the State must of necessity assume parental authority. The State must recognize its responsibilities, and discharge the functions which can find nowhere else the requisite authority. Experience has abundantly demonstrated the inadequacy of social dependence upon private charity fully to protect the community in this direction, notwithstanding the great and admirable philanthropic efforts continually made. These efforts are sporadic, unequally distributed, without any general plan or system ; beneficial, but incapable of the necessary completeness. The State alone has the ability to comprehend the whole mass in its care everywhere, to raise the money needed by taxation, to devise and establish

¹ "The Cost of Crime," Eugene Smith, *Report of National Prison Association*, 1900.

a progressive system of training, and a final confinement in suitable asylums for those who cannot be fitted for social life. The State can command the highest intelligence, the ripest experience, and all the resources of society in the performance of this duty, and accomplish all that is possible with the least expenditure of energy and money. The State must, therefore, take the entire charge of these children.

The work is easy in comparison with the reformation of criminals, because these children may be removed from a corrupting environment before it has made any durable impression upon their character. They can be nurtured to health of body, mind, and soul, instead of subjected to an arrest or perversion of development ; their whole childhood may be turned from wrong into right directions, and its training be for honest, instead of criminal manhood. The primary inculcation of good habits of life is far easier than the breaking up of acquired bad ones and the late substitution of good ones in their place.

The infant is human clay in the hands of the parent, which is moulded, according to the will and skill of the manipulator, into a manhood of honor or dishonor. There are but few persons born with an organism so far divergent from the normal constitution that it cannot be trained up to at least a safe conformity with the requirements of social existence. The disease of criminality, like every other disease, is most successfully treated in its incipency ; or, if

it is hereditary, when the remedial treatment is begun in infancy. Most children can be brought up in harmony with their generation by proper care, instead of in hostility to it if they grow up without this care. The cost of their proper training by the State, where it is not supplied by the natural parent, will be far less to the public than the cost of permitting them to grow up uncontrolled into criminals; probably less than one third of what the adult criminal costs.

This assumption of parental functions by the State, however, where they are lacking, does not necessitate the indiscriminate collection of all the uncared-for in institutions, which experience has proved to be as unfruitful of the best results as it is unnatural. Institutions are required for some classes of defectives, for the temporary care of infants, and for the primary training of children who are found to be unfit for introduction into family life. It is, however, a very difficult matter to give every child in a large institution that personal attention and love, that "milk of human kindness," which is the natural food and nurture of the child in the family. Mr. Brockway and others testify that many of the convicts who have come under their care have been graduated from various public institutions. The legitimate duty of the State is to gather up all those who are without proper parental care, and to supply the best it can. The number of families who want children, and will properly train them, is

undoubtedly sufficient to furnish most of the parental care which is lacking, if the State will undertake to equalize and adjust the supply and demand. The existing voluntary children's aid societies always find a constant demand for nice, healthy children, equal to their supply. But their experience has suggested the necessity of the power of the State in some cases to get the children; the support of the State during their preliminary renovation and distribution; and, more than all, in their subsequent supervision and maintenance, after they have been "placed out" in families. This is another duty which could be well discharged by the probation officers in the various judicial districts; who should be authorized to select voluntary aids from the charitable women in the district, but who should be the official channel of connection between the child and the State.

The modern child-saving institution, built on the small, separate-cottage plan, accommodating a family of not more than fifty, with its educated and benevolent father and mother, and with its goodly measure of family life, is much superior to the large heterogeneous institutions which were formerly universal, and which have produced the unfavorable results that have been observed. A child reared in such an institution stands a much better chance of reaching a healthy, all-around development than if placed in a poor, hard-working, and unintelligent family, whose acceptance of the charge is inspired by a selfish desire for the service which

can be cheaply got rather than the service which can be rendered, and which makes the child of the State a drudge but little better than a slave. The modern cottage institution, with its scientific appliances for general physical and manual training and mental and spiritual nurture, offers a far preferable home for the homeless than that which many private families can or will give. Discrimination must be exercised, therefore, in placing children in private families, and careful vigilance in the visitation of them afterwards.

The minor wards of the State are divided, according to the different conditions which constitute them such wards, into four classes : *Neglected, Abandoned, Defective, and Delinquent Children.* There is no question concerning the duty or power of the State to provide for the last three classes, as no one else is obliged to do this ; but the natural, and presumptively inalienable, rights of parents over their own offspring raise often a very serious question when the State attempts to interfere with the control of children against the will of the parent, however much they may be neglected or even abused. The difficulty, however, arises more from the lack of official agencies than of legal power in the State. Ever since society has been organized into states, the Sovereign has been recognized by law as the supreme protector of the persons and estates of all the infants within its jurisdiction ; their personal and property rights as distinct and separate from those of the parent. The law imposes upon the

parent only proper guardianship and care, but this it must compel the parent to exercise whenever it is possible. When parents fail to provide this, the State has always exercised its supreme right, when it has been invoked, to remove children from their custody ; to take them from one and give them to the other ; or to place them where they will be properly reared, without any regard to so-called parental rights. Taking children from dissolute families frequently leads to the reformation of the parents, and so accomplishes a double social benefit. But this power of the State cannot be exercised without the formalities of legal procedure. There must be a prosecutor, a judicial trial, expenses incurred, and a better guardian found. The laws do not generally provide an investigating and prosecuting agent charged with this duty, or the necessary means for its execution in these cases. It is left to private charity to initiate the movement, which is often an unwelcome, distasteful, and unreliable dependence.

The imposition by law of the duty of caring for all apparently neglected children upon a special officer, or board of officers, would solve this difficulty also. Whenever it is proved to the satisfaction of the judge that parents are guilty of gross ill-treatment of their children, or that their habits are intemperate or criminal, or that their family life tends to corrupt and contaminate their children, or that they neglect to properly provide for their comfort or training, the State must depose them

from their guardianship, remove the children to wholesome care, and provide for them the training necessary for good citizenship. The cost of this provision, however, must be assessed to the fullest extent possible upon the natural parents in order to prevent those who desire to be relieved of the cost of maintaining their children from taking undue advantage of the State. This is not only the just power, but also an absolute obligation of the State, which it cannot afford to neglect. A power and obligation as imperative rests upon it in regard to the other classes named, and is even more important, because the State alone can discharge this duty satisfactorily.

The four classes of minor wards will necessarily be subdivided, for special treatment under State care, according to the following scheme :

- | | | |
|--------------------|---|---|
| I. THE NEGLECTED. | { | a. From parental incompetence or poverty.
b. From parental depravity or vice.
c. Half-orphans.
d. Orphans. |
| II. THE ABANDONED. | { | e. Foundlings.
f. Illegitimate infants with mothers.
g. By unknown parents.
h. By discoverable parents. |
| | | { |
| | | Responsible.

Incompetent. |

III. THE DEFECTIVE.	PHYSICALLY.	<ul style="list-style-type: none"> i. The blind. j. Deaf-mutes. k. Incurably deformed,crippled, or diseased. l. Curably deformed,crippled, or diseased. m. Weaklings.
	MENTALLY.	<ul style="list-style-type: none"> n. Imbeciles. o. Feeble-minded. p- Insane. q. Epileptics.
	MORALLY.	<ul style="list-style-type: none"> r. Depraved by heredity or environment. s. Criminal by disposition. t. Vicious by habit.
IV. THE DELINQUENT.	<ul style="list-style-type: none"> u. Arrested for felonies. v. Arrested for misdemeanors. 	
	<ul style="list-style-type: none"> w. Insubordinate or incorrigible. x. Truants and runaways. 	

In order to organize a complete and effective system of State care for its minor wards it will be necessary :

First : That the law shall positively prohibit the confinement of any minor, except such as shall be sentenced to death or to life imprisonment, in jails or prisons ; and the retention of any child over two years of age for more than two months in an almshouse, except (c and f) "Infants with good mothers" up to six years of age, and such (k) "incurably deformed,crippled, and diseased," and such

(m) "weaklings," as cannot be as well cared for in other institutions of the State.

Second: That *Juvenile Courts* shall be established in all large cities, for the trial or disposition of all children of school age who may fall into the hands of officers of the law, as either delinquent or neglected. This is necessary in order to insure immediate and careful investigation of all the circumstances and adjudication of the case, as well as to prevent injury to the self-respect and character of the child by bringing it into the general criminal court in association with old criminals. Such a court will appreciate the expediency of allowing many of those brought before it to go at large on probation more fully than judges who are accustomed to deal with hardened criminals according to specific penalties.

Third: That a "State Board of Children's Guardians" shall be constituted of about an equal number of men and women of high reputation and large experience in philanthropic work, who shall serve without pay in order that the positions may not be sought by politicians, upon which Board should be devolved the powers and duties of the State in respect to these minor wards. The Board should be held responsible for the proper care of every uncared-for infant in the State, and empowered to make and enforce such rules and regulations as in its judgment may be necessary to insure this.

To this end appropriations of the State funds should be made for its travelling and office expenses;

for the salary of a general agent and such assistants and clerical force as may be required ; for legal expenses ; for the maintenance of children temporarily cared for and their transportation to the place of permanent residence ; for their board and transfers ; and for whatever other expenses the board properly incurs in the execution of its duties under the laws.

The Board should be empowered to appoint auxiliary county or district boards of visitors, with authority of visitation and inspection of all State wards in its district, and to defray all the expense of such visitations. It should be authorized to require the appointment of probation officers in sufficient numbers to supervise all uncared-for or delinquent minors at large in every judicial district, and to cause the removal of such officers as are in its judgment inefficient. The Board should have power to obtain the assistance of constables, police officers, and detectives, and to commit all neglected, abandoned, and defective minor wards to suitable State institutions, and to private hospitals at the cost of the State ; to place them in families, either for board or for permanent adoption ; to summarily remove from any place or family any that are not satisfactorily cared for ; to compel negligent parents or relatives, who are able, to defray the expense of children in the care of the State ; to license boarding-houses for infants under such regulations as it may adopt ; to inspect and regulate the management of all State and private institutions where any minor

ward of the State may be ; and in general to do and perform whatever may be necessary to the efficient discharge of its duties. It should be made obligatory upon this Board to place all children in good, carefully examined families, as rapidly as and to the fullest extent that may be possible. It should be authorized to make contracts with families for the care of children placed in its charge ; and with the boards or officials of other States for those who cannot be provided with good homes in their own State. Families of the same religious faith as that of the parents, where it is known, should be preferred as far as possible. It should be the aim of the Board to keep the minor population of public institutions at the minimum of numbers, and to place its wards, as far as possible, in early, helpless infancy, when they are most likely to win the love of their foster-parents.

States will require, nevertheless, five classes of institutions exclusively devoted to the care of its minor wards ; in number and size proportioned to their population.

First : The *Children's Aid Houses* ; where all minor wards can be primarily received, cared for until permanently located, and trained into reasonable fitness for membership in good families.

Second : The *State Orphanage* ; for infants with their mothers, erring girls, and foundlings.

Third : The *Truant Schools* ; for the neglected, abandoned, truant, insubordinate, and incorrigible children of school age.

Fourth : *Male and Female Industrial Schools* ; for the Juvenile Offenders.

Fifth : *Children's Hospitals* ; for the Curably deformed, crippled, and diseased.

The first, second, and fifth classes should be directly managed by boards of trustees appointed by the Governor, by and with the advice of the Senate, and constituted of both men and women of philanthropic character and reputation.

The *Truant Schools* should be managed and supported by the Public School Department of the State under similarly appointed boards of trustees, subject to the joint supervision and authority of the Board of Children's Guardians and the Public School Department. They should be pleasantly situated in healthy country locations, easy of access from the principal centres of population ; built as boarding-schools, on the cottage plan, in order to secure proper classification and separation of the pupils according to sex, age, and character ; be provided with shops for manual training adapted to children of both sexes, in sloyd, clay modelling, drafting, and carpentry ; the common occupations of country life ; sewing, cooking, and household duties for the girls. Sufficient land should be connected with them for outdoor recreations and gardening work adapted to children. They should be, in location and capacity, adequate to provide comfortably for all delinquents of school age who cannot be trusted at large under probation, except those arrested for felonies : for (v) " Juvenile Offenders "

arrested for misdemeanors, the (w) "Insubordinate and Incorrigible," and persistent (x) "Truants and Runaways." Pupils should not be discharged before reformation has fitted them for free life, nor returned to parents who have not paid the school bills, if able to do so, and never until a good home or situation at work has been provided, and then upon probation and on parole. The incorrigible at graduation should be transferred to an industrial school for further treatment.

The *Male and Female Industrial Schools* have been described in Chapter XV. To them the Morally Defective (r, s, and t), and Delinquents arrested for felonies (u), of School age—who should be subject to the supervision of the Board of Children's Aid Guardians—should be directly committed.

A *State Children's Aid House* should be established in all populous centres; with sufficient accommodation for the temporary care of all classes of minor wards who may be discovered by the public or the police. They should receive all comers, and cleanse, dress, investigate, and distribute them according to the circumstances and needs of each. There should be a matron in superintendence with a sufficient number of assistants; a regular medical superintendent, responsible for the examination and health of all the children and the sanitary condition of the house; although it will not be necessary for him to be continually in residence except in very large houses. In large cities, separate wards for

infants and for the sick and injured will be required, as well as for the older boys and the girls. The chief duties of the Board of trustees will be to discover the needs and the nature of each child brought in, and to prepare each, as soon as possible, for a permanent location. Many only temporarily destitute may be returned to proper parents when they can support them. Although at first most are physically and morally unfit for decent family life, ninety per cent. can be made acceptable in a year.¹ This Board will be the great philanthropic agency of the community concerning children, and will solve the question which has so long vexed the charitable, "What is to be done with this child?"

A *State Orphanage* should be established in every State ; some of the larger States will require several. They should be located in the country and designed for the care of all neglected and abandoned children below the school age of six years, with their indigent mothers. These mothers can assist in the care of infants, and in their nursing and training, while undergoing a course of general training and discipline themselves. The mothers should be judicially committed with their children under an indeterminate sentence ; and discharged only when fit for a respectable free life, and when a proper home has been secured for them by the Board. All infants left in the orphanage without mothers, or by mothers or fathers, should

¹ Homer Folks in *Charities Review*, 1900, p. 182 ; *Report of National Conference of Charities*, p. 181.

be held as wards of the State, entirely without knowledge of their parents (who should not be permitted intercourse with them), to be placed for board or for adoption at the discretion of the Board, before, if possible,—certainly as soon as,—they arrive at school age, so that they may attend the public schools and have family home training. The orphanage should be managed by a matron, and have an infirmary, play and kindergarten rooms for the older children, and a special reformatory department for erring girls.

The *Children's Hospitals* should be located in the suburbs of the large cities, for the convenience of the patients, and to secure the best medical and surgical skill on the staff. They are vitally important for the physical defectives of subdivision i, of which there will be found a much larger percentage than among children of good parentage, well cared for.¹ Very many of this class may, by the skill of modern surgeons and doctors, be rendered able to support themselves, who would otherwise be doomed to a life of misery and pauperism, of repugnance and reproach to society. Many of the defects of eyesight and other senses and members can be remedied, which would otherwise prove lifelong obstacles to success. The State cannot afford to allow any child who can be cured by proper treatment to endure a life of dependence

¹ The last Annual Report of the English Childhood Society states that of the 100,000 children examined 1.6 per cent. were found defective to a marked extent.

and suffering. People will not adopt defective children, and they must be lifelong dependents upon the State unless their defects are cured in childhood. These hospitals should receive all patients committed by the agents of the State Board, who should have authority to obligate the State for the cost of their treatment, and to transfer them to such places as are suitable when the hospital superintendent certifies to the desirability of their removal.

In addition to these institutions, specially intended for minor wards, each State should maintain five different kinds of Asylums for special classes of defectives of all ages, with a children's department in each. These are the asylums for the (i) Blind ; the (j) Deaf-Mutes ; the (n) Imbeciles, physical, mental, and moral ; and (o) the Feeble-Minded who can be trained to some degree of self-care and support ; (p) the Insane ; and (q) the Epileptics ; to which all minor wards of these classes should be directly transferred as soon as discovered. The (k) Incurably deformed, crippled, and diseased must necessarily be committed to the almshouse ; but it should be made the duty of the State Board to visit all almshouses at least four times each year and to see that such inmates are humanely treated. The Board should also exercise great vigilance to avoid relieving parents unnecessarily from the care of defectives whom they are able to support.

It is an axiom of sociology as well as of Pe-

nology, that *no healthy child should be permitted to grow up in an institution, without family training.*

The tendency of the State aid, contract, or subsidy plan of supporting minor wards in private institutions has been to encourage their undue detention in them in violation of this law, to the serious damage of the public. By improper political influences, extravagant appropriations have been secured for such institutions, based upon the numbers maintained, often more than enough to entirely support the whole organization. This precedent has not only encouraged the retention of inmates, the "padding" of reports, and carelessness, or worse, in sifting applications for admission. It has encouraged parents, especially newly arrived immigrants, to regard these institutions as public boarding-schools, intended to relieve them from the burden of supporting their children, and has encouraged the multiplication of institutions without due regard to the needs of society. This plan, besides, prevents that general classification and separation of the children which is essential to their proper training. Each institution is a law to itself; no general authority can be exercised over them to separate into classes and remove contaminating children to other suitable institutions. It also inevitably establishes relations between the State and sectarian institutions which are contrary to many State constitutions, and antagonistic to the principle of complete separation between Church and State upon which our Republic is founded.

These evils were impressively illustrated in the experience of the State of New York during the period from 1875 to 1892, while its subsidy plan was in unrestricted operation.

"New institutions were incorporated for the purpose of receiving these allowances of public funds, and there grew up what can be described only as a fierce rivalry on the part of various institutions to secure the commitment of large numbers of children to their care. The result was inevitable; children's institutions, of a size hitherto unknown, were developed, and the number of dependent children increased out of all proportion to the population. From 1875 to 1892 the general population of the State increased thirty-eight per cent.; the number of children in institutions, ninety-six per cent.

"Comparatively few of the children were placed in families, the great majority of them being returned to their parents or relatives upon reaching a self-supporting age. . . . Of the children who, on September 30, 1894, had been supported by the city of New York more than five years in institutions, ninety-seven per cent. were in sectarian, and only three per cent. in non-sectarian institutions. . . . The number of children in institutions had increased from 14,773 on September 30, 1875, year by year, to 33,558 in 1894."¹

The experience in California and elsewhere under the subsidy plan has been similar.² Mr. Edward T. Devine, the General Secretary of the Charity Organization Society of New York City, in a paper read at the New York Conference of Charities in Albany, November, 1900, said:

"From the maze of complications and difficulties in which the

¹ Homer Folks, *Charities Review*, February, 1900, p. 556-557.

² *Ibid.*

whole question of the care of dependent children is involved a few principles emerge :

"First—Children should remain with their parents if the latter are of good character and have sufficient income for their support. Simple and obvious as this proposition appears, it has been frequently violated in the past, and in the city of New York its violation has been so widespread and continued as to create in the minds of thousands of residents in the city, and even in the minds of future residents who are still beyond the seas, that by coming to New York and putting themselves into relations with the proper persons it will be possible for them to rid themselves of the expense and burden of looking after their children.

"Second—Parents who are of good character and who with a reasonable amount of private assistance can support their children at home should, as a rule, receive such assistance, and the breaking up of the family should thus be averted."

What society requires is a complete system of care for all the minor wards of the State, from their birth until they become honest and independent citizens ; or, if they cannot be made such, that they be retained in confinement to the end of life. Such a system can be organized and operated only by the State.

Mr. Homer Folks, at the conclusion of his treatise upon "The Care of Destitute, Neglected, and Delinquent Children," in the April (1900) *Charities Review*, estimates the total census of children's homes in the United States in 1900 to be from 80,000 to 85,000 ; and, including those for Juvenile Offenders, at 100,000 ; while there are probably now 50,000 others in public or private institutions—a total of 150,000. It does not seem

probable that the existing instrumentalities, lacking system as they do, have been able to reach half of those who should be cared for, and it may be conservatively assumed that there are at present in the country at least 300,000 children who require the attention of society. If we were to spend \$500 a year in training this number, it would only be a third of the annual saving to the public by deterring them from criminal lives. The subject is certainly worthy the best thought and study of statesmen.

Even the desultory and unsystematic work of private charity has demonstrated, beyond question, the great usefulness of child-saving efforts. For instance, the forty-seventh annual report of the New York Children's Aid Society contains an interesting study of the children it has placed in homes from 1854 to 1875 :

" Not including older children afforded transportation with their parents to points in the West, the total number of children placed in families during the twenty years was 20,004. Of this number, 2423, or a little less than one fifth, were under ten years of age. There were received from public institutions 2578, from lodging houses and industrial schools of the Children's Aid Society and from private institutions, 11,308, and from parents, relatives, and other sources, 6118. The after careers of many of the children are not known, but of those who have been traced, 53 are teachers, 2 are college professors, 22 are lawyers, 12 clergymen, 23 bankers, or engaged in banking business, 9 physicians, 4 druggists, 15 telegraph operators, 2 railroad managers, and 7 conductors."¹

One child sent west by an eastern society after-

¹ *The Charities Review*, December, 1899, p. 416.

wards rose to be Governor of a Western State. It may be fairly assumed that nearly every child that has been rescued by these societies has been saved from a life of crime and shame. Public necessity, philanthropy, reason, and experience all urge an immediate and systematic undertaking of this great public duty by the State governments. We may state as a law of Penology that *it is the duty of society through its organized government to provide proper parental care and training for all neglected, abandoned, defective, and delinquent children.*

CHAPTER XVIII

THE EDUCATION OF CHILDREN IN PUBLIC SCHOOLS.

Proportion of the Criminal Class due to Defective Parental Training—Early Training the Best Prevention Known—Necessity of State Supervision—Washington's Injunction—National Legislation, and Recommendations of Later Presidents—General Grant's Recommendations—Of Later Presidents, and Congressional Neglect—Evidences of the Failure of Existing Methods—Percentage of National Illiteracy—Percentage of School Enrollment—Brevity of Attendance—Good Citizenship the Only Object of State Supervision—Cause of Failure the Abolition of Moral Training from the Schools—Their Control by Local Boards—The Incompetence of Teachers—Failure Inevitable under the Conditions—Duty of Congress—Private Initiative in Educational Matters Unsatisfactory—Government Initiative and Control Necessary—The Congressional Action Required—State Legislation—Mental Education alone Pernicious—Duties of District Directors—Great Value of Physical Education—How Conducted—Principles of Mental Training—Public Morals the Gauge of Civilization—Moral Training the Supreme Object of the Public School—What Constitutes Morality—The United States a Christian Nation—Its Public Education must be Christian—The Bible its Foundation—Correction of Evil Habits—Non-sectarian Religious Instruction—Inculcation of Moral Principles—Knowledge of the Duties of Parenthood—How Imparted—Special Education of Teachers—Conclusion.

ACCCEPTING the estimates of criminologists that three fourths of the criminal class come from the neglected, abandoned, defective, and delinquent children who are permitted to mature without proper training, the other quarter must of course be the outgrowth of normal children who have been reared by their parents. Most of the "de-

linquents " included in the seventy-five per cent. considered in the preceding chapter are also, doubtless, subject to parental guardianship.

Of the 9344 convicts committed to the Elmira Reformatory eighty-nine per cent. lived at home until after they were fourteen years old, and twenty-seven per cent. had secured a common-school or higher education. We may safely assume, in the absence of positive data, that at least one third of all the criminal class are the result of inadequate or defective parental training.

" Train up a child in the way he should go ; and when he is old, he will not depart from it." —Proverbs xxii. 6.

" ' T is education forms the mind ;

Just as the twig is bent the tree 's inclined."

Pope, *Essays*, ep. i., l. 149.

These are adages expressing a universal conviction, the instinctive principle upon which all parents act, a proposition that no intelligent person would be bold enough to deny, that any healthy, normal infant may be trained, by suitable means, to a maturity of honest, self-supporting citizenship. Therefore we say not only that the public neglect of its duty to the neglected, abandoned, and defective children who have no other capable guardians is responsible for three-fourths of the criminals, but also that most of the other fourth is to be charged against the defective training of the general mass of children. We do not assert that education, even as it is at present best understood, is an infallible

panacea for the disease of criminality, or that it is possible by means of it to eradicate entirely, in less than three generations, the criminal degeneracy of all time, but we do say that it is the chief specific yet discovered for its reduction and prevention. The great fault of present methods is that we apply this remedy in reformatories too late in the life of the criminal. Most of the tremendous burden of crime is due to ignorance or neglect in the training of children. The criminal is a wild man, an untrained savage in society.

“The mind of the criminal has not properly developed ; through some congenital or acquired deficiency its development has stopped at an inferior stage, which resembles in many respects that of the minds of savages and barbarians ; it is therefore naturally incapable, or has become so artificially, of acquiring that self-control and taste for methodical work which are peculiar to civilized man.”¹

Criminality manifests itself mostly in crimes against property ; ninety-two and one-third per cent. of the commitments to Elmira have been for such crimes. This indicates either an indisposition or incapacity to earn honestly what is wanted ; both of which defects of character are naturally corrected by the early acquisition of industrious habits. When parents neglect to train their children properly, society, which suffers from such failure, should remedy this fault in self-defense. It becomes necessary for the State to compel a proper education of all children. This is a vitally important duty in a democ-

¹ Professor Ferrero, *The Independent*, Nov. 8, 1900, p. 2690.

racy, where the people elect their lawmakers and rulers by popular vote. Wise legislation and good government cannot be expected from an ignorant or immoral people. There is danger to the Republic so long as even a small minority remains unintelligent and liable to be swayed by demagogues, excitements, and delusions. In the Presidential election of 1900 President McKinley's popular plurality was only 859,824 out of 13,967,777 votes cast for the two principal candidates. Within a month after his election financiers estimated the advance in values of property in the country to have averaged at least ten per cent., which would be, on the estimated value of \$100,000,000,000 of property in the country, an increase of \$10,000,000,000 due to his election. It is generally believed by them (as the principal issues were financial) that the election of his opponent would have caused a depreciation in values of at least ten per cent. If these opinions are correct, the possible variation of national values effected by that election amounts to twenty thousand millions of dollars. And this tremendous result was produced by the votes of 859,824 persons, in a nation thirteen per cent. of whose population in 1890 were illiterate; at which rate we have now at least 1,400,000 illiterate voters; at the usual estimate of one voter to seven of population. This is a momentous risk to submit to the decision of people with an illiterate element so much greater than the largest majority to be expected in such elections. This is, however, only the direct, domestic

financial issue. The far-reaching consequences of a possible change of our relations with other nations ; the possibilities of war ; just at present the interests of the people of our new insular dependencies ; our influence among the powers surrounding the Pacific ; our future commercial expansion concerning which the two great parties so widely differed, all depended to a great extent upon the result of a popular election. Not only the prosperity but also the very existence of the Republic, which can only continue under a fair average of intelligence in government, especially now we have grown so great and influential among the powers of the world, depends more than ever upon the intelligence, patriotism, and morality of the people.

George Washington, our first President, that great patriot who won our independence for us and established our government, in that sublime parental benediction which he bestowed upon us as his *Farewell Address*, recognized this, and enjoined upon us the necessity of public education in these golden words which should be ever before the eyes and impressed upon the minds of our statesmen and people :

“ Of all the dispositions and habits, which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of Patriotism, who should labor to subvert these great pillars of human happiness, the firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections

with private and public felicity. Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths, which are the instruments of investigation in Courts of Justice? And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be considered to be the influence of *refined* education on minds of peculiar structure, reason and experience both forbid us to expect, that national morality can prevail in exclusion of religious principle.

“T is substantially true, that virtue or morality is a necessary spring of popular government. The rule indeed extends with more or less force to every species of free government. Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric?

“Promote then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.”¹

As a further evidence of the depth of his feeling he made a bequest in his will to found a free school in Alexandria, Virginia, and a university in Washington.

Article III. of the Act of Congress for the government of the Northwest Territory, passed July 13, 1787, reads, “Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.” This is still the law of the United States. No other national legislation, however, was had in furtherance of public education until the establishment of the National

¹ *Washington's Farewell Address.*

Bureau of Education, March 2, 1867, and the amendment of the Act, June 30, 1869.

Thomas Jefferson, in his message to Congress in 1806, recommended an amendment to the Constitution to permit the application of an anticipated surplus in the national treasury "to the great purposes of the public education," etc.¹

Abraham Lincoln, before his great mind became fully occupied in the preservation of our Government and the liberation of the blacks, said, "In one word, free labor insists on universal education."²

General Grant, whose patriotism was doubly refined in the furnace of war, after his practical mind had been expanded by two terms of the chief magistracy, says, in his seventh annual message to Congress, reiterating it in his eighth :

"As this will be the last annual message which I shall have the honor of transmitting to Congress before my successor is chosen, I will repeat or recapitulate the questions which I deem of vital importance which may be legislated upon and settled at this session :

"First : That the States shall be required to afford the opportunity of a good common-school education to every child within their limits.

"Second : No sectarian tenets shall ever be taught in any school supported in whole or in part by the State, nation, or by the proceeds of any tax levied upon the community. Make education compulsory so far as to deprive all persons who cannot read and write from becoming voters after the year 1890, disfranchising none, however, on grounds of illiteracy who may be voters at the time this amendment takes effect."³

¹ *Messages and Papers of the Presidents*, vol. i., p. 409.

² *Addresses and Letters of Abraham Lincoln*, vol. i., p. 582.

³ *Messages and Papers of the Presidents*, vol. vii., p. 356.

Every President since his time, save one, has striven in messages and on all appropriate occasions to impress upon Congress and the people the great fundamental and vital principle of American institutions, that the enduring success of a free government is impossible unless it provides the means of insuring the intelligence of those who are the source of power. No stream can rise above its source. If citizens desire to maintain a good government, they must compel their government to insure good citizens. This would seem to be a self-evident proposition to every patriotic and intelligent mind, but the national government has almost entirely neglected action for this purpose for a hundred years; and the State governments, while generally recognizing their responsibilities, have hitherto made only desultory and widely varying provisions for the education of their children.

The demands for increased jail and prison room; the tremendous bill of crime; the failure of criminal court procedure to restrain criminality; the growing public disregard for the sacredness of the oath, and the consequent distrust of the jury of the vicinage; the shocking prevalence of copartnerships between public officials and the vicious, the criminal, and the law-breaker; the development of a class of professional politicians fostered by what they see "in it" for their personal advantage; the venality of voters, and the political corruption which ramifies throughout the office-holding

organization of government all give conclusive evidence that the evils against which the Father of our Country and our wisest statesmen have warned us in vain, are upon us. Our public schools, of the development and perfection of which we have been inconsiderately inclined to boast, so far have evidently failed to insure that general good citizenship upon which good government in America depends.

There are several reasons for this failure. The first and great reason is that they have not educated and do not educate all the children. Thirteen and one-third per cent. of the people ten years old and over in 1890 were illiterate ; 6.2 per cent. of our native white population of this age were illiterate. The percentage of illiteracy varied all the way from 0.8 per cent. of the native whites ten years old and over in Massachusetts, to 45.8 per cent. of the entire population in Louisiana ten years old and over. There were 2,065,003 of our native white people ten years old and over who could not read or write. According to the census of that year 35.8 per cent. of the whole population was of school age, five to twenty years old.

The United States Commissioner of Education estimates in his report for 1897-98, that only 20.05 per cent. of the entire population July 1, 1898, were enrolled in the public elementary and high schools. If the same ratio of persons of school age exists in 1900 as in 1890, 15.3 per cent. of our children, or 11,673,780 in number, are not even enrolled in any schools. Certainly 70 per cent. of this number, or

all under fifteen years old, should be. There are, then, over 8,000,000 children constantly without the advantage of the public schools. This is a dangerous, and should be a very alarming, condition.

The second great cause of this failure is the necessary consequence of the brief attendance at school of those enrolled. The average number of school days in the United States in 1897-98 was but 143.1; and the average number of days attended by each pupil enrolled was but 97.8; the terms varying from 59 days in North Carolina, to 192 in New Jersey. In Berlin, the annual average is 240 days. But on our small average of days, 31.61 per cent. of the pupils were always absent, and only 68.39 per cent. attended regularly.¹ Very small and inadequate educational results can be expected from such a limited and irregular attendance of pupils, even if the instruction in the schools should be the very wisest and best that can be devised, which, unfortunately, is not generally the case. It would be much better if all children of school age should be kept in school ten months in the year than that they should be overstrained in the effort to compress ten months' education into eight months or less of cramming.

Thus we come to the consideration of the third principal cause of the failure of public schools. This is the fatally defective plan of instruction which has prevailed in them. The State assumes the duty of educating its children, primarily, to

¹ *Report of Commissioner of Education, 1897-98.*

insure an intelligent suffrage. The vital importance of the general intelligence of all its voters to the permanence of free government has naturally concentrated the attention of public instructors upon intellectual education almost exclusively. Coincidentally, the general recognition of the necessity of guarding another fundamental principle of our Government, the absolute separation of Church and State, has encouraged the general abolition of all religious and moral instruction from our public schools. This perversion of principle has caused a neglect of that co-ordinate physical and moral training of children which is absolutely essential to the production of a well-developed character. An abnormal product is the natural result, of which the criminal is one kind ; hence the number of educated criminals we find, and the large percentage of our convicts who have attended the public schools. The only proper object the State can have in the training of children is good citizens. No man can be a good citizen who is not honest, self-supporting, and patriotic, as well as intelligent. Napoleon Bonaparte, Benedict Arnold, William M. Tweed, Dr. Webster, the murderer, ex-Governor Moses of South Carolina, and many noted criminals, dead as well as now living, were and are men of high intelligence, but very bad and dangerous citizens.

The good citizenship which is necessary in a free government consists of a strong and healthy physique, capability and habits of productive industry,

sound moral principles controlling action, correct judgment concerning right and wrong social and political action, and a well and evenly trained mind. A wisely conducted public training can insure these qualities to almost every child in that moderate and modest degree which is adapted to the lower stations of life; and many may be progressively educated and trained by it to a capacity for the highest. But, to accomplish this, education must be equally and uniformly directed to the simultaneous culture of the three inseparable elements of every human being: the soul, which inspires action; the mind, which regulates action; and the body, or physical instrument of action. The confinement of public education exclusively to the mental faculties not only develops them disproportionately, but also the constantly increasing pressure for more education, caused by public disappointment with the results heretofore obtained, competition for advancement through examinations, public comparison of reports, the efforts of unintelligent school boards to compress a year's instruction into eight or less months of school and the ambition of teachers, combine so to overwork, exhaust, and impair the health and strength of the regular pupils that the usefulness of their maturity is often greatly reduced instead of benefited by it.¹ The physique becomes puny instead of robust; the soul and moral nature is atrophied; the superstimulated intellect

¹ The health and efficiency of the teachers is also greatly impaired by the "cramming" of late school methods.

excites to vicious indulgences ; there is no moral control, and the whole disposition is turned towards skillful depravity rather than an honest, noble citizenship. It is because there has grown up in the country a generation almost without moral education in the public schools that skepticism, infidelity, irreligion, atheism, and anarchy are obtruding themselves more and more boldly upon public attention ; that vice and immorality are so very pervasively corrupting the social fabric that the people in our cities are becoming alarmed at their prevalence and their power ; that popular suffrage is becoming venal, elections being decided more frequently by money than by principle ; that lying, fraud, dishonesty, bribery, disregard for the sanctity of the oath of office and in judicial proceedings, false swearing, perjury, and the corruption of juries are destroying popular confidence in courts of justice ; that cheating, deception, overreaching, and subtle dishonesty in business affairs, when the legal penalties can be evaded, are so much practised, and tolerated as " smart " instead of being universally condemned as criminal ; that unselfish patriotism in politics, a high level of honor and mutual confidence in business, exact and certain justice in legal trials, and an incorruptible morality and virtue in society are so far from that universality which is desirable. The degeneracy of the times, most of the crimes which are committed, the horrible usurpation of the functions of law by lynchers, are to be charged very largely against those agencies which have caused the

Bible and the teaching of morality and religion to be banished from our public schools to a great extent.

The fourth great defect of the American public school is the indefensible transfer of their entire control by the State to locally elected boards of directors. These boards decide upon the amount of the tax to be levied ; they collect and expend it. They provide such schoolhouses, accommodations, furniture, supplies, and text-books as they see fit. They fix the school terms, prescribe the course of instruction, employ the teachers, and fix their salaries. If all school directors were uniformly intelligent, patriotic, and honest it is evident that there could be no uniform and general system of public-school education by these independent and heterogeneous boards. The instruction of each district will vary in quality and quantity according to the views of its directors. But political prominence, prestige, power, patronage, and profits in contracts and purchases tend to make the generality of school directors a part of the political machine, and the office is sought more as a step in political preferment, and for what can be made out of it, than as an opportunity to serve the State as an educator of its children. Neither the results nor the observed methods of management indicate that the majority of the school directors have any special fitness or sense of and care for the grave responsibilities of the office, under prevailing political conditions.

The fifth cause of the failure of our schools is the general unfitness of the teachers to whom the

training of the young for their serious work is committed. The low rate of the teachers' pay, which results partly from the desire of the members of the school board to expend most of the funds in ways which can be made to inure to their profit, and which averaged, in 1897-98 for the United States, \$45.16 per month for males and \$38.74 for females,¹ a percentage of which is often exacted to secure an appointment and the retention of a situation; the wire-pulling and management required to secure positions, and the practice of making appointments for one year only, all tend to restrict applicants to those of a low degree of equipment and competence, and make our public schools a nursery of mediocrity instead of a sphere of talent for teachers. The lack of proper regulations for the examination and selection of teachers, and for their subsequent promotion in position and salary for ability and experience, also restricts the aspirants for teachers' certificates to those of moderate ability, to young women who can find no other reputable employment, and to effeminate young men. This also largely prevents pedagogy from becoming the honorable and attractive profession it should be, and the art of teaching from being studied and adopted as a life-work by young men and women of ambition and ability. Teachers cannot feel secure in their positions when they are appointed, moved about, and dismissed for political reasons, regardless of merit. As a consequence,

¹ *Report of United States Commissioner of Education for 1899.*

they are apt to perform their duties perfunctorily, with little of that inspiring interest in their pupils which is so essential to successful instruction. They teach mainly for their own self-support and to retain their salary. It is vain to expect thoughtful training, thorough instruction, and inspiration to higher ideals from teachers who perform their daily duties as drudges. Nor is any uniform or general effort made to prepare them for or impress them with either the individual, social, or national responsibilities which rest upon the public-school teacher. Very slight if any attention is given to the special natural qualifications which are so vital to the successful training of children, and very superficial examination made in many instances of even mental requirements. It is not magnificent buildings, great libraries, or expensive apparatus which are wanted, so much as liberal salaries, which will attract capable instructors, secure them positions of self-respecting independence above the humility of poverty, and the inspiration of a hope for promotion for faithful service beyond the reach of politicians.

Under prevailing conditions the failure of our public schools to reduce criminality, or insure the intelligence, morality, and good citizenship of the whole people, is inevitable. Our national dependence upon them to safeguard free popular government, support political prosperity, and sustain the power and integrity of the Republic is a dangerous delusion. No voluntary, desultory, unscientific, unregulated,

and unsystematic education of the children of a free people can possibly meet the requirements of a popular government of society on its present plane of civilization. It is manifestly neither economical, wise, nor safe for the people to intrust these vital functions to the unregulated, undirected, and more or less unintelligent control of district boards of directors composed of local politicians. In other departments of their political economy they control and regulate the action of public officials by general laws. The time has come for both national and provincial statesmen to give heed to the solemn advice of the Father of his Country, and the repeated recommendations of our greatest statesmen and most patriotic men. The national Congress, to provide for the public welfare, and control the public schools, under the power given it in Art. I., Sec. VIII., of the Constitution, must discharge its duty by prescribing the universal establishment and the general regulations of a complete public-school system, which shall provide the means and insure the proper education of all children under sixteen years of age in the land. The several States must assume the full support and control of this system of schools, in accord with the objects and methods of the national regulations.

Private and local initiative and regulation in public education supported by taxation is as false in principle as it is unsatisfactory in practice. This is manifest from the fact that the more ignorant any community is, the more it needs good schools ;

while this very ignorance not only disqualifies it for a wise provision of them, but even prevents a recognition of the need itself. There can be no desire or want for that of which there is no knowledge. Our lately acquired population in Puerto Rico and the Philippines do not want to acquire our language, or American Institutions, because they are entirely oblivious of the wealth of information which familiarity with our language would open up to them, and of the inestimable blessings which our institutions would bestow. The beneficent principle of decentralization of power, which is a conservative element of popular government in its executive and repressive functions, is inapplicable to its educational powers. The people must cling closely to the powers of restraint and limitation which they delegate, but it is naturally impossible for them to originate, or manage, the influences which will lift them up above themselves. These must of necessity be exerted from above by those who are superior in wisdom and intellect to the masses. Governmental control of public education is therefore theoretically and philosophically as sound and correct as it is practically necessary.

The reformation of our public schools must begin in our legislatures. The system of public-school education should be inaugurated at Washington. It is therefore the duty of our Congress, in order to promote the public welfare and insure that good and intelligent citizenship at home which it does not hesitate to take measures to compel in

Puerto Rico and the Philippines, and upon which the perpetuity of our popular government depends, to constitute a National Bureau of Education for the supervision and regulation of the education and training of all the children of the people. This bureau should be empowered to prescribe the general plan of instruction, collect and distribute information concerning popular education, and recommend such Congressional or State legislation as may be necessary to accomplish its objects. Three commissioners should be placed at its head ; appointed by the President, by and with the advice of the Senate, for a term of ten years, with a salary equal to that of the justices of the Supreme Court. The official term should be made long, to avoid the danger of frequent changes of plans and methods, and the salary large, to attract the best talent, because the position is not less responsible than that of the Supreme Court justices. One commissioner should be a professional expert in physical, one in intellectual, and one in the moral training of children. In order to induce and promote legislation by the several States calculated to insure honest and intelligent citizenship, all national legislation for their benefit and advantage should be conditioned upon the enactment by them of the plans and methods recommended by the National Bureau of Education.

The direct responsibility for good citizenship rests, of course, upon the State legislatures. The citizens of the States have to settle the bill of costs

of crime, pauperism, and ignorance, and suffer the penalties of misgovernment. It devolves upon them to secure relief by their own legislation. This may be accomplished by prescribing that all children shall be properly trained and instructed physically, mentally, and morally, until they reach sixteen years of age, upon the general plan recommended by the National Bureau of Education ; and by providing good free public schools and facilities for the education of all children who are not otherwise instructed. The State must assume the control and general management of all public schools ; fix the length of school terms ; enforce regular attendance ; supply the text-books, apparatus, and furniture ; prescribe the course of instruction and training, the qualifications of teachers, fix their salaries, issue certificates, permanent during satisfactory service, provide for their instruction in pedagogy, their promotion by merit from the lower to the higher grades, and for the encouragement of a professional class of teachers. The State should assess, collect, and distribute the school tax, according to the population of each district. It should institute a department of public education, with a general superintendent and subordinate superintendents in each district, who should be charged with the educational direction of all public schools, and the duty and power of compelling the attendance of all children under sixteen years upon some school during the regular terms. This department should organize the public schools in three grades, according

to the requirements of each locality; for primary, grammar, and high schools¹; and arrange the classification of scholars in each. It should institute normal schools for the instruction of teachers, examine and approve all plans for new or changes in old buildings, and generally execute the school laws in all matters relating to public education.

The belief which prevails in the mind of the public, and which controls the instruction of the average teacher, is that public-school education must be entirely mental; that its object is simply to instill knowledge into vacant brains. This is a pernicious belief, a theory which in practice tends to prevent rather than promote good citizenship by cultivating inordinately only one of the three essential elements of character, and thus produces an abnormal instead of a symmetrical, normal result. No child is properly trained unless equal attention is devoted to body, mind, and soul, and a co-ordinate and symmetrical growth of each is secured. The paramount purpose of the public education of children by a State, especially one founded upon the principle of self-government, must necessarily be to teach the individuals who are to constitute the State an intelligent government of themselves. For how can a person who cannot wisely govern his own actions individually be capable of social self-government in the more extensive and complex relations

¹ Dr. Schaffer, State Superintendent of Public Instruction in Pennsylvania, estimates in his report for 1900 that about one sixth of the population of that State does not have the advantages of the high school, on account of rural situation.

of political life? The people must first learn to govern themselves wisely as individuals. It is impossible that the aggregate enactments by the people for the people should be wiser or better than the average intelligence and conduct of the majority. Public-school instruction must, therefore, be directed to the formation of an intelligent, self-controlled character. This is impossible without strong principles and sound morality. The State must supplement all that parental training of children fails to supply, in physical and moral, as well as in mental education, proceeding along each line of direction simultaneously and uniformly. The rational plan and order of subordination is that laid down by Herbert Spencer :

“that education which prepares for direct self-preservation ; that which prepares for indirect self-preservation ; that which prepares for parenthood ; that which prepares for citizenship ; that which prepares for the miscellaneous refinements of life.”

To which we would add, as most important of all, that which prepares the soul for immortality. Without this all the rest is vain, incomplete, and insufficient for its purpose. Moral education, the inculcation of a disposition for and a power of self-control by high principle and virtue, the fixing of the goal of life and effort in the eternity which follows its brief span—that is the main object of public-school education, as well as that of all the mortal life. This order and plan should be enacted by the

State, and not left to the discretion of district-school boards.

The duties of the district-school directors should be confined entirely to the material and economical interests of the schools. They should build the schoolhouses, provide the apparatus, play and exercise grounds; have the care and charge of the heating, lighting, supplies, repairs, and maintenance of school property; pay the teachers and employees, and be responsible for the honest and wise expenditure of the school funds assigned to their district.¹

Physical education has far more utilitarian value to the child and the State than mental, notwithstanding the slight attention it has hitherto received in the public schools. The great majority of children are destined for lives of physical labor. For them health, strength, and skill will be the chief means of support, comfort, happiness, and progress. If health and strength are lost, all is lost. To gain the whole world of knowledge by the sacrifice of good health profiteth nothing. It is certain that

¹ The importance of this responsibility may be estimated from the statement that the expenditures for public schools in the State of Pennsylvania for the year ending June 4, 1900, amounted to \$21,476,994.90; the value of the school property being estimated to be \$54,797,506.32. The State of New York expends annually more than \$47,000,000 on education. The total amount expended in the United States during the year 1897-98, the last reported by the Commissioner of Education, was \$194,020,470, equal to an average of \$2.67 per head of population. The expenditure varied from \$5.07 in Massachusetts, where it was highest, to \$0.53 in North Carolina, where it was lowest. The average expenditure per pupil for the year was \$18.86, which varied in the several States from a maximum of \$39.10 in Massachusetts to a minimum of \$3.59 in Alabama.

no circumstance of human life, neither rank, station, opportunity, genius, talent, nor wealth, is as conducive to success and happiness in our mortal lives as sound health. The first object of the public school should assuredly be the development of a strong and healthy physique for every child. There should be medical examinations every term for defects of the senses; prescription of special physical culture, and regular daily free gymnastics in every schoolroom with wand, dumb-bell, and breathing exercises. A course of scientific athletics should be prescribed for the correction of curable physical defects; exercises, sports, and games should be encouraged, with the stringent enforcement of the code of honor in them as a part of the moral culture. For the preservation of health, daily instruction should be given in its laws concerning food, drink, air, cleanliness, exercise, rest, work, play, sleep, the force of habits, and especially of bad habits. To cultivate skill, muscular celerity, activity, endurance, and habits of regular work, the earning powers and capacity, manual and industrial training in the ordinary avocations of male and female life—for boys the handling and use of common tools, for girls in the duties of housekeeping, cooking, and sewing,—should be practised as a part of the daily routine, not with a view to any special trade, but to the development of dexterity, facility, and strength, which will enable the graduate to acquire his trade more quickly when he begins to work. Physical culture should begin, like the mental

with the primary elements at the first entrance of the pupil into the school, and should be progressive according to age, in its physiological, hygienic, sanitary, and utilitarian departments, concluding with instruction in that almost universal function, almost universally neglected, the care, rearing, and training of children and the duties of parenthood, which is the first and greatest responsibility of citizenship. It is not only essential in a utilitarian sense, but a very important reflex contribution to the general culture, by the increase of vigor which it cultivates in the brain and nervous system.

Mental training in elementary public schools, as in all, has for its primary object the stimulation, development, and discipline of the intellectual faculties of the brain. It is the means, but not the main object of all education; of instruction in knowledge, as well as in physical and moral culture. It is to be accomplished by the continuous exercise of all the faculties and functions; by the study of objects more than of words and books; by a continuous exercise of memory, of the reasoning powers, the weighing of arguments for and against various propositions, of judgment, and the mathematical faculties. Special powers should be encouraged and stimulated, but for the mass of children there should be no effort to crowd the mind with very much more than the necessary knowledge of the use of printed, written, and spoken language, arithmetic, elementary geography, history, and the science of living. Many of the evils complained of

under present methods of overcrowding pupils with studies will be corrected if a large portion of the time now given over to strictly literary work shall be occupied with inculcating the principles and habits of correct living. It is unnecessary, in this work, to enlarge upon the methods of mental culture. The reader is referred for details to the exposition of this subject by the great masters in the art of teaching,—to Comenius in the seventeenth, and Herbert Spencer, Matthew Arnold, Horace Mann, Professor John Swett, and many others in the nineteenth century.

The degree of its public morality is the only correct gauge of the actual progress of a people in civilization. Literature, science, inventions, art, wealth, and numbers have brought in the past, and may still bring, temporary distinction and power to a nation, but races and states endure only according to their public morals. The spiritual is the only element of national life which is immortal, as it is of the individual human life. The great nations and states of the past all perished of the disease of immorality. History, philosophy, observation, science, and personal experience, therefore, each and all declare that the cultivation of the moral nature of its children is the first great duty of the State. If the morals of the children are made healthy and sound, then all else is safe. Then nature will preserve physical health, strength, and numbers; intelligence, patriotism, and all the other civic virtues will flourish spontaneously, and free government continue on the earth.

Moral training must be made the predominating purpose, the supreme object of public-school education. To this everything else should contribute. All instruction, regulation, exercise, discipline, and every influence should be so designed as to develop and mold the spiritual nature of the children, in preference to the intellectual. The good moral character to be assured consists of a correct discrimination between what is right and what is wrong, the capacity of self-control, and the disposition to prefer right action to wrong against every temptation. Instruction inculcates correct judgment ; exercise and repetition strengthen self-control and make habit ; high motives and habit create disposition. These are the recognized means by which moral training is to be effected. They must be brought to bear on the soul, the conscience, that mysterious and least-known third element of every human being, of whose existence everyone is conscious, and that it must continue to exist forever. Its secret seat in the living body scientific research has failed to discover, but it has been demonstrated that it is capable of development like the mind and the body which it inhabits, and that this development corresponds with and depends upon bodily and mental development, just as the mental does upon the physical. However limited scientific knowledge is concerning it, no rational man can deny the existence of the soul ; that it is the real entity which constitutes and inspires morality, and that it is capable of culture and development. Moral training consists in implanting right principles and

motives in the soul, which governs, and instilling habits of action in accord with them. The consciousness of immortality must be strengthened, the great object of human life explained to be the preparation for eternal life, and the relation of the soul to the Creator and Ruler of the universe must be early made the theme of study and instruction.

Concisely defined, morality is conformity to Divine law. All human laws, customs, manners, actions, and intentions which violate the laws of the Creator concerning our nature, our relations to Him and to one another, are immoral. Conformity to the laws of God is the only infallible test of morality. Mere obedience under compulsion, or conformity to human or social laws (which may or may not conform to Divine law) without regard to their Divine origin and authority, cannot constitute morality, or that condition of public morals upon which the strength and perpetuity of a free state depends. As the laws of God are universal in their sovereignty, and not to be violated with impunity, it necessarily follows that the establishment of any practicable or beneficent code of ethics or morals for the regulation of human conduct which does not recognize this Divine origin and authority, but which professes to be independent—without relations with God, entirely human and social in origin and operation—is illogical and irrational. A Godless code of ethics has no foundation to rest upon except this basis of the grossest immorality, a denial of the sovereignty of the Creator. It is self-contradictory, an attempt by a fraud to make human action

conform to truth, honesty, and rectitude. There can be no wholesome moral training of children which ignores God, or omits religious instruction. The laws of God are the only laws which the mind cannot question, dispute, or resist, and which the soul accepts instinctively, without argument, as rules of action. They are therefore the easiest to impress upon the soul, as well as the most powerful and permanent in their influence. Hence it is the imperative duty of the State to begin the moral training of its children, in the schools which it provides for its self-protection, with the inculcation of religious principles.

The American government is a Christian government. America was settled and taken in possession by Christians. Our Declaration of Independence as a people, in its first sentence assumes "the separate and equal station to which the laws of nature and nature's God entitle them," and in its last closes "with a firm reliance on the protection of Divine Providence." Our independence was won in this spirit, and our government established by a Christian people for a Christian people. Our State constitutions and our laws are framed upon and recognize Biblical and Christian principles. Congress appropriated \$20,000 for the importation of Bibles during the Revolutionary War when they became scarce. The oaths of our Presidents and all our public officials are solemnized upon the Bible. Our laws are administered and executed by means of juries and witnesses

sworn upon the Bible. The observance of the Christian Sabbath is enforced by law, and it is characterized all over the world as the "American Sabbath." The great public messages and documents recognize the sovereignty of God. Our Presidents annually enjoin upon the people to render thanks to God for the blessings of the year. The history of our progress as a nation is divided into three distinct epochs by our self-sacrificing devotion to Christian principles. The first step was winning independence as a State, with civil and religious liberty, in answer to the prayers of a pious people, led by Washington on his knees in the snows of Valley Forge. The second step was the consolidation of all our States into one nation by the sacrifice of 359,528¹ of our choicest sons to free the land from human slavery, in obedience to a Christian conscience and the overruling will of God. The third great epoch opened upon us unsought, when we unselfishly took up arms in Christian charity at the cry of distress from our neighbor, Cuba, and were transformed in the Providence of God, suddenly, into one of the greatest world powers, with interests and influence diverted from ourselves to all mankind; from a selfish, egoistic, to an altruistic nation. The unexpected and stupendous issues to us as a people from these three critical national events give evidence that the Ruler of all the earth bestows great reward upon nations which are governed by His

¹ *Regimental Losses in the Civil War*, Fox, p. 46.

will. It behooves us not to forsake the foundations upon which the fathers built, or the principles which have given us the most that is valuable which we have and are. The lamp of our national experience guides our course in the regeneration of our people through their public schools. It indicates, no less certainly than science, philosophy, and reason, that the State must compel the education of all its children in religious morality to insure the public welfare.

Not only is our government a Christian government in fact, principle, and practice, but it is a self-government of its people by the will of the majority, which always has been and is now very largely Christian. So long as this condition continues, its government and institutions are of right and ought to be Christian. We refuse its blessings to no one of good character, we guarantee to all perfect liberty of religious faith and practice, we tolerate all religions, but can permit no one who differs from our national standards to dictate changes in, or assume to control, our established institutions or the public education of our children. What we do as a people or a State shall be done pursuant to the principles upon which we are organized.

The Bible is the recognized source and guide of our national religious belief and morals. We must insist that it shall continue to be used in our public schools daily, as the basis of moral instruction, and that all schools shall be opened with an invocation

of the blessing of God upon the work of the session. The substitution of a salute to the flag for the religious opening of schools is a substitution of a symbol for a fact, — a surrender of the essence of good citizenship and patriotism to its semblance. That patriotism which has been our safeguard in the past has grown out of the Bible. Let the flag be saluted with due solemnity, with prayer to God, and in the presence of the opened Word of God, in order that patriotism and reverence, as the basis of public morality, may be daily instilled into the souls and habits of the children.

As many pupils will have come from overcrowded tenements, homes of ignorance and poverty, the corruption of the streets, and some from depraved associations, the first duties of the teachers will be to eradicate germs of vice and immorality already propagated in their natures. The weeds must be rooted out before good seed can be planted, and the better children should be protected from evil communications. Profanity, obscenity, vulgarity, slang, improper speech, slander, tattling, lying, theft, dishonesty, selfishness, and all meanness must be not only prohibited, but made to appear despicable, to be avoided and abhorred. "Children should not only be *taught* what is right; they must also be made to *do* what is right. The school is a miniature world; in one way or another it affords opportunities for the practice of most of the moral virtues."¹ This practice must be continued until

¹ *American Public Schools*, Swett, p. 294.

it becomes a habit. "The moral nature must be called into daily exercise until habits of right thinking result in habits of right doing."¹ What Herbert Spencer calls the "normal reaction" of wrong doing should be relied upon for its correction and punishment. Thus for obscenity, vulgarity, and corrupting conduct, entire separation and seclusion from the well-behaved would be the natural remedy. But successful moral culture will depend upon the nature and wisdom of the teacher more than all else.

There ought not to be, and is not, any insuperable difficulty in the arrangement of a scheme of religious instruction for general use in the public schools which would be Christian but not sectarian, against which no truly patriotic Christian of any denomination or sect, Protestant or Catholic, could raise any rational objection, and which would also observe the principle of the separation of Church and State. Concerning the fundamental and elementary doctrines of religion, which only should be taught in the public schools, all Christians are agreed. They are common to all, the basis upon which all rest, and they can be taught without prejudice of the youthful mind for or against any particular sect or denomination. All sectarian tenets, dogmas, and peculiarities of theory, belief, or practice should, of course, be interdicted from the plan of instruction. The recognition of the sovereignty of God, the Creator and Ruler of the universe, and man's accountability to Him for his con-

¹ *American Public Schools* Swett, p. 293.

duct in this mortal life, the Ten Commandments, the grand summary of Christ, "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind, and thy neighbor as thyself," those parts of the Bible concerning which there is no dispute, some simple forms of daily prayer, and some of the universal hymns of praise can be arranged so that they may be prescribed as a part of the regular daily exercises and instruction of the children, and so make our public schools effectively safeguard the State and the people against the gangrene of immorality.

The germs of truthfulness, honesty, honor, love of justice, fair dealing, of cheerful obedience to law, of altruism and self-denial for the good of others, must be implanted by interesting stories illustrating the value of these virtues to historical characters whom the pupils admire, and nurtured by suitable stimulating rewards for their practice.

"The chief use of history study is to form moral notions in children. Every deed of heroism, of benevolence, of charity, of patriotism, is a concrete embodiment of a precious virtue, while every mean, cowardly, dastardly act is an individual protest against meanness, cowardice, or villainy. We can only continue to deposit about these starting-points until at last the soul is strong in itself to stand against temptation."¹

"Precept upon precept, line upon line," and repetition until action becomes habitual and involuntary, establish a moral disposition. Intelligence and strength sufficient for the constant control of

¹ *American Public Schools*, Swett, p. 297.

action by correct principle constitute moral character.

Another most important department of education which is almost entirely neglected ought to be adopted, especially in the upper grades of the public schools, although elementary instruction in it may begin in the lower, and that is instruction in the care and nurture of infants and in the duties and responsibilities of parentage. It may be assumed that nearly every child who lives to maturity will become a parent, to whatever sphere of life it is destined, and that the succeeding generation will depend more upon the intelligence and faithfulness of its discharge of parental duties than all else. It is surprising that this supreme and universal function of the race should be so entirely ignored in educational processes.

“As the family comes before the State in order of time, as the bringing up of children is possible before the State exists, or when it has ceased to be, whereas the State is rendered possible only by the bringing up of children, it follows that the duties of the parent demand closer attention than those of the citizen ; or, to use a further argument, since the goodness of society ultimately depends upon the nature of its citizens, and since the nature of its citizens is more modifiable by early training than by anything else, we must conclude that the welfare of the family underlies the welfare of society. And hence knowledge directly conducing to the first must take precedence of knowledge directly conducing to the last.”¹

“Some acquaintance with the first principles of physiology and the elementary truths of psychology is indispensable for

¹ *Education*, Herbert Spencer, p. 33.

the right bringing up of children. We doubt not that this assertion will by many be read with a smile. That parents in general should be expected to acquire a knowledge of subjects so abstruse, will seem to them an absurdity. And if we proposed that an exhaustive knowledge of these subjects should be obtained by all fathers and mothers, the absurdity would indeed be glaring enough. But we do not. General principles only, accompanied by such detailed illustrations as may be necessary to make them understood, would suffice. And these might be readily taught ; if not rationally, then dogmatically. Be this as it may, however, here are the indisputable facts : That the development of children in mind and body rigorously obeys certain laws ; that unless they are in a great degree conformed to, there must result serious physical and mental defects ; and that only when they are completely conformed to, can a perfect maturity be reached. Judge, then, whether all who may one day be parents shall not strive with some anxiety to learn what these laws are."¹

But as they have not, and do not, and will not so strive for this knowledge in childhood any more than any other which they need and which the State is compelled to impart, the State must confer this also upon its wards, as its most reliable preventer of degeneracy.

It will be evident from this outline that it will be impossible to decide upon the competence of teachers for these grave responsibilities by a mere examination into their intellectual education, and that special training only can prepare them for the proper discharge of their duties. Therefore the laws must prescribe that no one shall be intrusted with the education of children in the public schools

¹ *Education*, Herbert Spencer, p. 64.

who has not received such a training in a normal school which provides it according to the prescription and to the satisfaction of the educational department of the State. The chief duty of the State will be to insure the highest competence of the teachers in its schools. A certificate of this from the State department of instruction should be the only warrant for a teacher's place in the public schools.

A complete and general system of public education which will compel the harmonious and coordinated culture of all children in the three elements of good citizenship in every individual, up to the age of fifteen years, in either private or public schools, instituted and enacted by national and State legislatures, is not only the chief safeguard of free government, but the cheapest, most comprehensive, and effective measure for the restriction and prevention of the disease of criminality which can be adopted.

CHAPTER XIX.

KINDERGARTENS AND ORPHANAGE TRAINING.

The Vital Importance of Good Maternal Culture in Early Infancy — The State Must Insure the Education of all its Females in Maternal Duties— Ignorance of this Prevalent among the Best-Educated — Importance of Competent Nurses and Governesses — Need of Training the Middle Class — Help as well as Instruction Required by the Lowest Class — Necessity of State Instruction on Account of Negroes and Immigrants — Obligation upon the State to Insure Competence of Mothers — To be Secured through the Kindergarten — The Idea of the Kindergarten — Confirmed by Science — Universality of the Law of Development — Froebel's Object — Kindergartens to Supplement Maternal Deficiencies — Growth of Kindergartens — Results Observed — Mother Training—Essential Part of Public-School System—Kindergarten Normal Schools — Kindergartens a Subprimary — Who Should Attend—Compulsory Attendance—State Must Care for Every Child—Kindergartens in Orphanages — Regulations — Only State Care Adequate — Moral Obligation of the State.

WE have overrun the lines of the hostile forces down to children below the school age, and have even eliminated from them all those abandoned and defective infants who are of necessity the wards of the State. Our Science has made its prescriptions for curing the various familiar phases of moral depravity, and for the restriction of its development in the social mass. We have now come to a study of that plastic period of human life which nature commits almost exclusively to the mother's care and training. The real embryonic condition of

mankind continues up to five or six years of age, when education in the popular sense can begin. Before this, it devolves upon the mother to feed, cultivate, and stimulate the rudimentary germs of health, intelligence, and morals, dormant in every infant's nature, into action and a symmetrical development. Upon maternal solicitude, intelligence, and devotion during the first six years of infancy, depends, more than upon all else which may be done, the character and career of every human being. It is for her anxious eye to detect the first sign of hereditary abnormality and to strive to remedy it, whether physical, mental, or moral, before the tender organs take their permanent set. It is for her tender care to shield the helpless child from harm of body, mind, or soul which might warp or distort them from uniform rectitude of growth. It is the wisdom of her training that will so vitalize and cultivate the latent functions as to best prepare them for growth and development by the education of childhood. So great and permanent is the effect of this maternal culture that it may be safely asserted that nearly the whole criminal class has grown up without good and intelligent mothers, and that scarcely any good and intelligent mother has failed to rear her children into honest respectability of life. Such mothers are fewer by far than have failed to rear physically healthy and strong children. Whenever the child of a good mother goes astray or is arrested for crime it causes a profound astonishment to all who are familiar with the family,

as an unnatural and abnormal result, not to be expected or rationally accounted for. Such unusual and accidental occurrences are commonly attributed not so much to defective training as to obscure hereditary weaknesses, or to peculiar circumstances against which the usual training of a good mother was an inadequate protection. Society owes all its great and good men to good mothers, and most of its criminals to bad ones. For an ignorant, incapable, or neglectful mother, however excellent and loving her own character, may be a bad mother. A failure to kindle into life and to develop the germs of morality and intelligence in an infant's nature, while it is under her exclusive care in these first six years of its life, is as detrimental to its future as starvation, or carelessness of its physical health. The latent germs of morals and mind are most easily atrophied or deformed in the embryonic period of infancy, when they yield without resistance to the gentlest touch. They may be given a bent or direction by a word or look which afterwards only vigorous and persistent training can alter, just as a child may be made permanently bow-legged by being allowed to rest its weight on its feet while its bones are still soft, or right- or left-handed by being made to hold things in either hand exclusively for a couple of weeks while the muscles are in their pulpy condition. Many hereditary defects may likewise be corrected by suitable infantile correctives, if intelligently supplied, as experience has abundantly demonstrated. The uplifting of

humanity, the progress of civilization, the welfare of society, good citizenship, the public health, intelligence, and honesty, depend much more generally upon the good maternal training of children than even upon hereditary influences. The early environment of good maternity is a far more influential factor in social morals than even paternal heredity. A good mother is worth at least two generations of good fathers.

"The causes of crime are legion in number. But if the question were asked, What cause contributes more than any other to the formation of criminal character? I believe the students of crime and those who have had practical experience in dealing with criminals in prison would all unite with substantial unanimity in this answer: *The inefficiency or absence of parental discipline in early life.*"¹

The first measure of social sanitation, then, the supreme and universal hygienic effort which must be made to purify the great source of moral depravity and reduce the continuous supply of criminality in the rising generations, will be to insure good mothers for them. The education and training of mothers for their maternal duties takes precedence of the general education of its children by the State. It is the initial step, the only reliable basis and sure foundation upon which to build any hopeful scheme of human regeneration. It is the fundamental principle of social hygiene that *the State shall insure the proper education of all its females in the duties of motherhood.*

¹ Eugene Smith, *Parental Responsibility for Crime.*

This duty is especially urgent in our own country because of the ignorance concerning these duties which prevails even in our best-educated society. It is doubtful if half the well-educated girls who marry have received any special instruction in preparation for the discharge of these grave responsibilities, or have given them any thought. When a mother's duties come to them amid the high demands of our advanced civilization, they find themselves little better qualified than the mothers of a savage race; for they are forced to rely upon nature, upon the maternal instinct, as did the mothers of early days, for guidance in the nurture of their child. Thus, they are deprived of the legitimate and necessary advantages which modern science and the experience of all time should afford them in meeting the enlarged requirements of existing social conditions. With the best intentions, they often secure only the results of incompetence, the humiliations and sorrows of failure.

But in the upper classes of society, mothers who can afford the expense employ nurses and governesses to train their children for them. They shift the care and burden of child nurture over upon those who are willing to relieve them of it for pay. Thus there comes to be a demand upon the lower and less-educated working classes for a class of nurses and governesses whose occupation is child nursing.

It is especially important to the public weal that the girls of this class should be properly trained to

rear up with wisdom those who are destined for social leadership, and whose example and character will exert wide influence and control. They certainly should be taught how to supply the most efficient and beneficent motherhood before they are entrusted with so great a responsibility ; for some of the most dangerous and corrupt members of society are the ruined young men of strong hereditary will and capacity.

The prospective mothers of the great mass of our citizens, the working people, whose education is confined to that supplied by the public and private schools, are as a general rule kept in careful ignorance of the cares and duties of this principal natural object of their lives. Their own mothers are either ignorant themselves, or refrain, from some mistaken notion of delicacy, from imparting what they do know ; and the schools give no special instruction to the older girls in child care and training. So the most of them come to motherhood as insensible of its responsibilities and as incapable of discharging them as their own mothers were before them. Thus the dead level of the class and its social plane remains undisturbed, generation after generation, and fails to receive that initial impetus which ought to come from a uniform and harmonious awakening of all its powers in infancy. Good health, common sense, and the rules of virtue, temperance, and religion preserve the status of the majority and protect society from serious degeneration in this section of its elements ;

but defective training contributes many recruits to the criminal class who might have been reared to usefulness, honesty, and happiness if their mothers had been instructed how to do it. This is the class which mostly supplies the paid nurses and governesses of the wealthy.

It is from the poor, the ignorant, and depraved lower stratum of society, that the largest number are added to the criminal ranks. Here the mothers are not only generally ignorant, and oblivious of any duty beyond the physical nourishment of their offspring, but the struggle for existence so presses upon them that there is little time left for child nurture. As soon as the children are old enough to look out somewhat for themselves they are turned into the street to be out of the way. Here they grow up like weeds in the gutter. The animal nature has stimulus and development, but the mental is only exercised in cunning, in trickery, in deception, guile, and theft ; profanity, obscenity, and lying are its first lessons ; and the moral or spiritual nature remains dormant. Every sight of the eye, every sound to the ear, every desire of the heart, every impulse, of necessity is to evil and not good. When the child of the gutter is old enough for school he has become wicked enough to be an unfit associate for better-reared children ; a dangerous infection to introduce into the schools, and an intractable subject for the teacher. He is already likely to be a disturber of the peace of the school, and a breaker of whatever rules interfere with his

untrained, savage will; a "presumptive criminal" who lacks only years and strength to entitle him to his degree as a criminal in fact as well as in possibility. The mothers of this class need not only instruction, but help. That their children may be nursed into even the moderate development suitable to their stations, they must be assisted by those who have the necessary knowledge and disposition.

The necessity for the intervention of the State to provide this general protection and help is greater in our self-governed country than in any other nation. In the first place, we have an immense mass of uneducated and but partially civilized negroes who are rearing their young up as qualified voters generation after generation, largely in an untrained state of nature, without any general or systematic public effort for their improvement. Although they constitute over thirteen per cent. of our population, the great majority of the colored population in the South are densely ignorant of the morals and manners of social life which we deem essential to individual comfort and public prosperity, and of the duties and responsibilities of the citizenship which we have thrust upon them. The really great characters which the black race has produced in other lands and in our own, and the very remarkable improvement of those who have been subjected to the brief influences of the Hampton and other educational institutions, have demonstrated that there are no inherent or insuperable

obstacles to the elevation of our black fellow citizens by suitable culture to the general plane of our civilization. No intelligent, fair mind can now doubt that this great part of our population is capable of being transformed into as good and useful citizenship, of being made as valuable to the country, as any other equal number of Americans. If they are permitted to continue in their present savage ignorance, they must be an increasing menace to society and free government, a constantly growing increment to the criminal class. Elementary education alone cannot effect this transformation of character. They must be taught how to live; the principles of domestic sanitation and hygiene, of parental duty, of virtue, honesty, morality, patriotism, and religion. Their spiritual nature must be developed in infancy, and trained by habit of right action into principle. This work must begin with the negro mothers.¹

And, in the second place, a horde of impoverished and ignorant immigrants is continually pouring into the country from all parts of the world. They settle among us with the customs and habits of the down-trodden of other lands, entirely ignorant, generally, of everything which we cherish as necessary to good citizenship, and devote all their efforts to securing food, clothes, and shelter. Absorbed in the struggle for a meagre living, they are content to exist without thought of an improvement in their degraded condition. That they may

¹ See "The Criminal Negro," Frances A. Kellor, *The Arena*, Feb., 1901.

be assimilated into our body politic and cease to be a debasing and dangerous element in our community they should be taught how to live as we live; how to feed and clothe themselves, how to nurture and care for their children, how to become our future electors, how to observe our laws and respect the rights of others, as their predecessors have been taught. This teaching will be most effectively done by showing them how to be more comfortable, healthy, and happy, through the improvement of the condition of the children who are brought under the influence of trained Kindergartners. Through their children we may find the most welcome introduction into their homes and confidence, and be permitted to instruct the mothers in home-making, healthy living, cooking, and intelligent nursing, in cleanliness, and in godliness. This door of approach our Kindergartners find always open to them.

The object of organized government is the provision of means by which the community can secure for the common welfare and protection the advantages which its individual members do not possess, and are unable alone to obtain. It is therefore incumbent upon government to supply, so far as it is able, all the requirements of the common welfare as soon as they are manifested. Pursuant to this theory the State undertakes the education of its children. It will fail to attain this object economically and satisfactorily unless it extends its care a step farther and insures the universal

competence of its mothers as well as the sanity, morality, temperance, and health of its fathers. The safety and welfare of society require, as we have stated in the preceding chapter, that all children shall receive what instruction it is possible to impart to them in the public schools concerning the proper discharge of the duties of parentage, which is the most general function of mankind.

"This topic should occupy the highest and best place in the course of instruction passed through by each man and woman. As physical maturity is marked by the ability to produce offspring, so mental maturity is marked by the ability to train those offspring."¹

But we require more imperatively than this, under the existing conditions in our country, the general and special instruction of the mothers of our future citizens in the scientific care of infancy.

Private philanthropy and individual initiative have recognized and undertaken the discharge of this great social responsibility and have demonstrated the practicability and utility of a method of accomplishing this object by experiments with the great Froebel's Kindergarten (child-garden) system of infant nurture during the last twenty-five years.

Frederick Froebel, a genius, born in 1782, a "reformer not only of the art of teaching, but of the entire theory of education," formulated a practicable theory for the nurture of infants below the school age as a logical induction from the loftiest and largest possible generalization, which has since been

¹ Herbert Spencer, *Education*, p. 162.

confirmed by experiment and substantiated by the psychological and physiological discoveries of modern science. He said in the peroration of the speech in which he explained his system in the Kursaal at the Lubenstein Spa, in 1851 :

"The whole of nature, up to the appearance of man, the whole of history from the beginning of the human race through all the past up till the present moment, and then still onwards beyond us to the next final consummation, when the development of man shall fall from the Tree of Life as a ripened fruit, whose Kernel is the All, stands before my soul as a perfectly accurate and, so to speak, an exhaustive representation of true education."

Science confirms this induction by demonstrating the analogy of the progression of the growth of the human embryo from the original ovum, through the various forms of animal life, from the lowest up to its birth as a perfect human infant, complete in all its organs. Its proofs are the successive awakening, after the birth of the infant, of the latent desires, perceptions, and powers of consciousness, one after another, from simple hunger up to filial love and obedience ; from entire egoism to altruism in harmony with the progress of the human race as a whole. Action is proved to cause the development of the strength of each and every function, psychical as well as physical ; repeated action constituting habit and principle. *It announces action to be the first and universal law of growth.*

We observe also that this educative action is stimulated by appeals to nature through the medium

of the senses and desires ; that only those powers become active which are thus aroused ; and that every function lies dormant until it is thus started into action, and rests without growth unless it is stimulated by need. Thus we recognize in the life of each human being, as its various stages of progress are discovered by science, an epitome of the universe, and are taught to imitate in personal education the methods of nature, and of God. The law of development is the same from protoplasm to perfection, from the ovum to the universe.

The object which Froebel had in view and to which he devoted his whole life was the complete and uniform development of the child nature during its infancy, so that it might grow up with ability to use all its powers. He founded his infant nurture on this universal law, adapting, after careful study and experiment, practical contrasts of excitements and activities to arouse the innate but dormant germs of perception, reflection, reason, and the will. At the same time he accustomed the plastic sentiments of the child nature to right choices and desires ; so that rectitude of action should become habitual, and moral principle a controlling element of character. He called this his "mediation of contrasts," and "law of balance."

"Our little lives are kept in equipoise
By opposite attractions and desires ;
The struggle of the instinct that enjoys,
And the more noble instinct that inspires."¹

¹ H. W. Longfellow.

He said :

“ Not the training of the memory, not learning by rote, not familiarity with the appearance of things ; but culture by means of action, facts, and life itself, bring a blessing upon the individual, and thereby a blessing upon the whole community ; since each one, be he the highest or the humblest, is a member of the community ; now the training of the kindergartner is alike of the head and heart, and educates at one and the same time toward skilfulness in action and toward rectitude in life.” ¹

He observed how far even the best of mothers come short of achieving the best results, and how very inefficient the most are from ignorance or neglect, and devised a plan to supplement maternal nursing in his Kindergartens ; to train in them nurses, governesses, and mothers in considerable numbers, as Kindergartners of his system, so that it might become generally used in all families. The children of the poor and ignorant were to be first cared for, during the period of their neglect, to the relief of their parents, for their own protection from degeneracy, and their proper nurture. Training-schools for the instruction of Kindergartners in the science of his methods were urged as essential to success. By personal appeals, public lectures, writings, and publications, he labored for the first half of the last century to bring his methods and plan into general use, but died before he was permitted to see their general adoption, even by his own people. It has required the education of fifty years to

¹ Froebel's appeal to German wives and maidens, *Letters on the Kindergarten*, p. 224.

disseminate a fair understanding of the grave importance of his project among even the more intelligent classes in civilized nations; but it is now, at the close of the century of seed-sowing, coming to be accepted as an essential element of the education of the people.

The growth of his great idea has been slow, but strong and permanent; greater naturally in Europe, where the seed was first sown, than in America, where he predicted it would find its most congenial soil. But its recent progress here has been very rapid, and with constant acceleration. There were, for instance, in 1870, only five Kindergartens in the United States; but the National Commissioner of Education reports for the year 1896-97 (the latest published report) a total of 1077, with 2024 teachers and 81,916 pupils. The larger cities have been the first to appreciate and avail themselves of their advantages, because in them the need is greatest and most impressive. The same report enumerates:

In Chicago,	53	Kindergartens,	108	teachers,	and	4577	pupils.
" Boston,	64	"	125	"	"	4822	"
" St. Louis,	100	"	281	"	"	9154	"
" Philadelphia,	122	"	163	"	"	6225	"
" villages,	80	"	139	"	"	4717	"

The average cost of tuition was given, for the year reported, as \$16.73 for each pupil belonging, or \$11.78 for each pupil enrolled, during the year. Only a few of the more progressive and intelligently managed school departments have, however, as yet incorporated the Kindergarten, on any large or comprehensive scale, in their public-school systems. It

is still mostly dependent upon the varying opinion and decision of local school boards, or private philanthropy and charity.

The results of these tentative and desultory efforts, so far as it has been possible to observe and record them, have been highly satisfactory and encouraging. Kindergarten children are reported to be far more apt, tractable, and well-behaved when they enter the public schools, than those of the same age who have not received this training and development. Their minds are more receptive and active; their physical health is stronger; their habits are better, cleaner, and more correct; their moral nature more fully developed. They consequently make better progress in their studies, and derive more benefit from them, than the other children. Of some ten thousand who have passed through the Kindergartens of San Francisco, not one has so far been arrested upon a criminal charge. Considering that most of these children come from the lowest and poorest families, from the most ignorant parentage, and most debasing environment, whence we might reasonably expect the least hopeful scholars, these results seem to be an unanswerable argument in favor of the general assumption of the very small expense connected with the maintenance of Kindergartens by the State. Science proclaims it now as an incontrovertible fact, an axiom of human progress, *that every dollar that the State expends in providing that wise and uniform nurture of its children which they need before*

reaching school age, is worth ten spent after that in correction and education, and a thousand expended for protection from criminality, and the reformation of criminals.

The actual nurture of infants, however, is only one of the great offices of the Kindergarten. To train ignorant mothers so that they may be competent and disposed to continue the Kindergarten nurture in the family is probably more largely beneficial to society than the child-nurture it is itself able to bestow. This mother-training is effected in several directions, and by several means. The general institution of Kindergartens for the children of the masses would create a demand for so large a number of qualified Kindergartners as to render necessary special schools for their instruction. Thus a large proportion of the young women would receive a training for which at present no incentive exists. As a necessary preparation for this training, general elementary education in parental duties would become an important part of the public-school course, and would thus reach all the people. General interest would be awakened in the subject of child-nurture, and all who expect to marry would have their attention directed to the value and the means of acquiring such knowledge. The Kindergartners necessarily come into intercourse with the mothers of the infants in their care, and are consulted by them concerning their home treatment. The mothers are thus gradually and unconsciously instructed in the matters of which

they are ignorant,—both those related to child-nurture and to home-keeping. The teacher is therefore quite as much a mother-trainer as a Kindergarten, and bestows her benefits upon two generations with an equal hand. No other practical plan for insuring the necessary nurture of all infants, and the instruction of all incompetent mothers, has ever been suggested for public adoption.

The great social importance of the results obtainable, the easy feasibility of securing them, and the scientific basis of the methods employed all combine to authorize the incorporation of the Kindergarten in the public-school system. "It is a part of the system, as an adjunct to the public schools, to educate every woman in the valuable matters relating to the early training of children."¹ This is the dictate of political economy, sociology, and Penology alike. We may state it as a positive law of Penology, *that the very first duty of the State, in the protection of society from crime, is to insure the uniform and co-ordinate development and nurture of all its children, in their early infancy.*

The department of public schools must establish normal schools for the special training and instruction of Kindergartners in the theory and practice of child-nurture sufficient to supply the demand for them. Without such instruction it will be impossible to secure the necessary qualifications, and the Kindergarten is liable to be only a day nursery with a tendency to dissipate, rather

¹ Dr. W. T. Harris, *Kindergarten Principles and Practice*, p. 183.

than inspire, the infant activities. The desired results are possible only when the nurture is conducted upon Froebel's scientific system, and by such means as he found necessary. That is the only system known which will certainly produce the development desired, and knowledge of it is to be acquired only by special study and practice. The normal schools must, therefore, have Kindergartens connected with them, where the students can practise the art under the eye and advice of skilled instructors. Hence it is necessary that they should be located in closely inhabited communities, where children are plenty, and that they should be numerous rather than large. The great importance of a wise performance of their duties suggests that every graduate should be required to serve for a time as an assistant before she is permitted to assume the charge of a Kindergarten. As every Kindergarten requires at least two persons for its efficient and safe management, a principal and assistant will naturally constitute its corps of Kindergartners.

The department of public schools should, then, make the Kindergartens its subprimary classes and establish them in all their public-school buildings, so that the school-children may take their infant brothers and sisters to and from them. They ought not, however, to be exclusively limited to the public-school buildings, which will often be found unsuited or too small for their accommodation. They should be located in the midst of all closely populated

Kindergartens and Orphanage Training 411

districts, so that they may be easily and safely accessible to all the neighboring infants, and that these may not feel themselves too far away from their mothers and homes. The cost of rooms, furniture, apparatus, Kindergartners, and all the necessary expenses should be defrayed out of the general school funds.

All children below the school age who can walk and talk, who are capable of being managed, and whose parents desire to send them, should be admitted under such regulations as may be adopted for their reception by the local boards and the department. The authorities should be empowered, also, to compel the attendance of children whose parents are notably incompetent or neglectful, and to keep the unattended infant off the streets and public places during school hours.

The laws enforcing education are based upon the principle that no man or woman has the right to rear up a savage in a civilized community. This is a greater outrage by far than to let loose a venomous reptile, a ravening tiger, or a smallpox patient among the people. These every one recognizes and may escape. The hand of every man will be raised to slay or confine them, but the savage criminal who grows up in our midst works corruption and ravage until society is driven in desperation to confine him. There is no public nuisance so offensive or dangerous as the criminal savage. Society has no other means of protection from him than its organized government. There is no other power

but the State competent to insure that universal education which is absolutely essential to the public peace and prosperity. There is no other method known by which this may be accomplished universally except the Kindergarten and the school. Therefore the State is obliged to provide the Kindergarten and school for every child whose parents do not supply the proper nurture and training. When parents fail, the State, exercising its supreme parental functions, under the inspiration and guidance of the highest wisdom and science, must stand godfather and godmother to all its children from birth to citizenship, and be held responsible for the results.

The State should have its eye constantly on every individual within its domain; it should be omniscient within its sphere and to the extent of its power, and its helping hand should be ever extended to every needy subject. As its authority is Divine in its origin and example, its exercise should be equal, universal, Godlike, in its comprehensiveness and completeness. The State may not depend upon the voluntary efforts of charity to discharge its educational obligations to the poor and ignorant. It dares not; for the inevitable reaction of suffering and ignorance, under the inexorable laws of God, will rend and ruin it if it does. It must of necessity, then, provide its Kindergartens and schools for all children; and if this is necessary for society in general, there can be no question, certainly, concerning its obligation to insure the

proper nurture and education of those who have no other parental care.

The orphanages of the State, public and private, and all the homes for abandoned and neglected infants, must be organized and conducted upon the Kindergarten principle, and according to Froebel's methods, to insure that even and complete development of their inmates which is essential to good citizenship. Mere sustenance and shelter, which were the original motives for their institution, and which have hitherto very largely satisfied the consciences of their supporters, no longer answer the demands of our advanced civilization. Experience, which finds so many of their beneficiaries graduating into reformatories and prisons after an ungrateful career of criminal hostility, declares imperatively that infant-nurture includes much more than food and comfort ; that wholesome development is more important even than the preservation of a useless or evil life. Our Christian charity and faith accept the belief that death in sinless infancy is preferable for the individual soul to death deferred to the close of a life prolonged for vice and crime. It would be better to let the uncared-for infant die than grow up a criminal.

It devolves upon the State to provide well-trained Kindergartners in all those institutions where infants below the school age are cared for ; to supply the full maternal nurture which they need to prevent their growing up like savages ; and to stimulate into action the mental and moral functions in

harmony and correspondence with their physical growth. All such charitable institutions should be subject to the constant inspection and supervision of the department of education as well as of charities. The Kindergartners should be supplied, controlled, and paid by the department of public education, which must be made responsible for the proper preparation of the children for the schools.

Such an assumption by the State of its inherent prerogative to supply society what is necessary for its own welfare, and to make good by public administration the deficiencies of its individual constituents, is the only adequate remedy for the evils caused by arrested or perverted infantile development. It will very largely correct the pernicious influences of a corrupting environment, and apply the most efficacious cure to bad heredity. Until the State insures to all its infants the maternal nurture which they require for full development, and to all its children a wisely rounded education up to their sixteenth year of age, its contest with criminality will not cease to be its heaviest burden, and its most shameful and inexcusable failure.

But there is a higher motive than the economical, which imposes upon the State the duty of protecting its children during infancy from the permanent injury which so certainly follows when they are allowed to mature without the development essential to normal character. Society has moral and religious as well as material and economical responsibilities. It cannot ignore these duties with impunity.

The natural reaction of social sin or crime is as relentless and sure as of personal transgression. If the State fails to supply the default of the natural parent in the nurture of a single child within its borders, it not only suffers the immediate injury inflicted by an inimical citizen, but, having become accountable for the most grievous injury which can be inflicted upon a human being, it falls also under the terrible condemnation which Christ pronounced in Luke xvii., 1, 2 : " It is impossible but that offenses will come ; but woe unto him through whom they come ! It were better for him that a millstone were hanged about his neck, and he cast into the sea, than that he should offend one of these little ones."

The meaning of " offend " is to injure, to cause to sin or neglect duty. Certainly no greater injury can be perpetrated upon any helpless little one than to allow it to mature, without morality, into a life of evil, crime, and sin, the inevitable end of which is eternal death. The State which permits this is doomed, by the laws of God and man, to disease and death.

CHAPTER XX.

PENOLOGICAL ETHICS IN THE ADMINISTRATION OF LAW.

Maintenance of Law the Special Duty of Lawyers—Economic Interest of this Duty to them—Criminal Law the Foundation of all Laws—The Criminal Lawyer—Perversion of Legal Talent to the Escape of the Guilty—Honor of Defense—Duties of Judges—Ethical Laws of Trial—Illegal Verdicts by Juries—Patriotic Duty of Good Citizenship—The Public Prosecutor—The Advocate of the Defense—Mills' Rules of Ethics—Certainty and Celerity of Punishment equally Essential.

THIS treatise requires for its completion some observations concerning the prevalent faults of the practice of criminal law in the United States. Under existing conditions there is no single corrective expedient or remedial measure which would be more efficacious in the repression of crime, the restriction of vice and criminality, and the protection of society than a general conscientious recognition and rigid observance of the supreme ethical responsibilities of their profession by judges and lawyers in the trial of persons accused of crime. The legal profession is exclusively devoted to the study, practice, and execution of the law. Its business is to know and secure the greatest efficiency of the laws for the public good and the protection and advantage of its clients. Society depends upon

it to expound and correctly apply the provisions of its enacted statutes and established principles for the common welfare and individual safety. Its emoluments are derived from that great store of safeguards which social experience has accumulated for the community and the individual. The profession is itself the natural product and offspring of the laws. The laws are not only the means of its maintenance, the very implements of its occupation, but the cause of its existence. Upon the majesty, supremacy, and inviolability of law its usefulness, its earnings, its very life depend. The sovereignty and stability of law are both the plant and working capital of the legal profession; in proportion as these are preserved or impaired must the value of legal services vary. The observance and execution of law, reverence for law, are both the fundamental theory and necessarily the prime object of the profession. The perversion of its practice and powers to hinder or prevent society from obtaining the largest benefits from its laws stultifies the lawyer, betrays and degrades his profession, and is treason to civilization and humanity. No man of good judgment and ordinary business prudence would consider an immediate profit worth gaining at the expense of his capital.

The misuse and malversation of practices, precedents, and technicalities adopted for and adapted to the protection of the innocent, to facilitate the escape of criminals from the penalties of the law, to defeat the aim and purpose of laws and render

them impotent, for a fee, is to devour principal and principles instead of to enjoy legitimate income. There is no law of social economics or of nature more inflexible or certain than that profit or income is the specific yield or fruit of capital. Whether the capital or principal be money, muscle, brains, or law, the income derived from its use must grow or decrease in strict proportion to the social value of the principal. The capitalist who spends his principal, he who exhausts his mental or physical resources, the lawyer who destroys the utility of laws, all alike impoverish the sources of their future profit, and invite eventual ruin. Individuals may tamper, as many do, with the grand principles of the laws ; their impressive superstructure has withstood and will long withstand unshaken even the insidious burrowings of many at its foundations, but the final collapse of the " reign of law " is inevitable when its natural supports are undermined. In its ruin, lawyers, the government, and society must perish together. Self-interest and loyalty to his profession, as well as the safety of society, require the lawyer to make his allegiance to the supremacy of the law the self-evident, indubitable motive of all his practice. No lawyer can claim the confidence of the public whose loyalty to the sovereign law is exposed to suspicion. As his practical success or profitable practice depend upon public confidence in him as a lawyer, he cannot afford to cast the slightest shadow upon this loyalty. It is an old professional adage " that the lawyer is

on trial as well as his client." Both public and private interest demand an unfaltering, undeviating support of the majesty of law from all who make a business and livelihood in its practice.

The laws are the regulations which mankind associated in communities have by common consent enacted for the preservation and promotion of the common welfare and the protection of personal and property rights. They institute and conserve the social organization ; they constitute the State ; they stimulate and guard the individual in his avocations and life ; they make human progress and civilization possible ; property, person, and life secure, in the selfish struggles of competitive existence. Without law, anarchy, robbery, ravage, ravishing, and extinction result. The beginning of the government of law was the criminal code, for the repression of crime and the defense of society from criminals. Criminal law is the foundation of the whole edifice of human laws ; its integrity and efficiency the most essential to the common welfare of them all. It should, naturally and logically as the plant and germ, the essence and supreme principle, the cardinal function of them, hold the position of honor and highest respect among laws ; its practice should be the most reputable branch of the legal profession, instead of the least honorable.

" From ancient Roman times until recent years, the advocate in criminal cases held a conspicuous place of honor and recognition among men. The history of civilized nations has been glorified by his devotion, his bravery, his matchless

speech; he has stood for the oppressed, has defied tyranny, has been a shield against cruel power; has been a pioneer in the advance of human rights. He has been the incarnation of the finest spirit of the legal profession."¹

But the greatest and best lawyers have to a large extent become inclined to refuse retainers in criminal cases, except their repugnance is overcome by extraordinary fees, or some peculiar and exceptional appeal is made to their duty, while professional criminal lawyers are popularly and professionally held in small esteem. They are growing to be a distinct class devoted to the defense of criminals, sharing, sometimes, in their spoils, in close alliance with them, relied upon by the criminal class to extricate its members from the meshes of the law when arrested, and often to plan their depredations so as to provide for a successful defense. Criminal lawyers often become actual members themselves of the criminal class, and its most dangerous and pestiferous element. They devote themselves to the perversion and nullification of the laws and the protection of its violators. Their business is opposition to law; their success and profits are derived from the escape of the guilty, contrary to law. Their object and effort in the trial of cases is to conceal, and not disclose, the facts; to warp established legal procedure and principles from the protection of innocence to the obscuration of guilt; to cloud testimony with

¹ Address, *Thoughts on Criminal Law*, by Hon. Luther Laffin Mills, before the John Marshall Law School, Chicago, April, 1901.

doubt ; to pervert the presentation of evidence ; to discredit and even to suborn witnesses ; to secure delays until witnesses can be bribed or spirited away, and re-trials obtained by the disagreement of juries, the discrediting the ruling of judges, or by appeals to higher courts. They manipulate the list of jurors to secure complaisant or corruptible jurymen. This practice has become so common and successful, verdicts palpably contrary to the law and facts have become so frequent and startling, that public confidence in this great safeguard of human liberty is being seriously undermined. Such practices attack both the government of law and the most sacred bulwark of human liberties. They have made criminal-law practice so unpopular that it is largely consigned to such lawyers as find it congenial to their own disposition, and association with criminals tolerable ; to men who are susceptible to the corrupting and degrading associations of the lower social strata, and who are necessarily drawn down constantly to lower standards of morality. They have not only robbed the criminal lawyer of his legitimate, highest rank, but are gradually sinking him into the lowest order of his profession. They are, therefore, essentially vicious, hostile to the public welfare, professionally suicidal, and of the gravest criminality. They should be carefully restrained by the sternest powers of the courts.

The defense of notorious or atrocious criminals by lawyers of great ability and reputation, who are

induced to undertake the defense for the sake of large fees or the hope of distinction, is another species of legal malpractice quite as pernicious and destructive of the majesty of the law as the corrupt practices of criminal lawyers. If the criminal secures sufficient booty, or his relations are wealthy enough to employ the highest legal defenders, his escape from full punishment is almost certain. The successes of illustrious lawyers in preventing the execution of the law have encouraged the growth of a popular opinion and a belief among criminals that money is more potent than justice, even in the courts; that its power extends beyond the low sphere of bribery and corruption into the loftiest range of human influences. Such a conviction stimulates the commission of crimes, and nullifies the main utility of penal statutes by destroying the fundamental principle of the certainty of punishment for crime. The responsibility of a lawyer to society and his profession is in strict proportion to his talents and character; the greater these are, the more dangerous and injurious their misuse and prostitution in perverting the protection of the law from society to the criminal. The defense of a criminal by lawyers of exalted character not only lends a glamour of respectability to him and a color of reliability to his defense, but brings to bear on the jury influences intended and likely to secure a verdict from sentiment and emotion, rather than one resulting from reason, evidence, and law. No fee or reward or imaginary gain in reputation can

be a warrant or adequate compensation for such a profanation of genius, ability, and talent before the altar of Justice. The sovereignty and majesty of law are, indeed, maintained as impressively by surrounding the accused with every legal protection which the experience of the profession has devised under the direction of the highest talent, but this protection must never exceed the exact limits of the law ; nor, in the ardor of its exercise, or under the inspiration of the circumstances, should it attempt to defeat the supreme object of law. There is no nobler or more satisfactory triumph for the great lawyer than the rescue of the innocent from unmerited punishment, the saving of property, person, and sometimes life from an illegal condemnation. To compel the State to prove beyond a reasonable doubt the guilt of the accused before it shall inflict the sentence of the law is a motive and responsibility which the sovereignty of law, as well as duty and the fate of his client, devolve upon the advocate of the accused. The satisfaction and honor which may follow a successful defense conducted in accord with the established methods of procedure are as great and beneficial to society as can be derived from the conviction of the guilty ; for the government of law must guard the individual against the tyranny of society as fully as it protects society from the attack of the individual. The claims of one upon it are only supreme until they conflict with the welfare of all. The majesty of law is maintained as impressively in the legitimate

shielding of the accused, and in compelling a conviction to be made in strict conformity to law, as by the execution of its penalties upon the criminal.

These are the general principles which the experience of the past in the administration of criminal law has established as necessarily governing its ethical practice. It is within the province and power of the courts to enforce their observance. The social welfare, therefore, requires from courts and judges, first and above all else, the strictest, most zealous, and conscientious enforcement of conformity to law in trials. The execution of law must be not only certain and quick, but above suspicion, even, of illegality or injustice. It is impossible to maintain government by law contrary to law, to compel obedience to law by violations of law. The judge must hold the scales of justice with a firm and absolutely unwavering hand, with the keenest scrutiny that no illegal or false weight fall into either side. Evidence must be procured, introduced, or excluded according to law ; processes and procedure warranted by law, and designed solely to disclose all the facts pertinent to the discovery of the guilt or innocence of the accused. It is the supreme duty of the judge to confine the trial strictly to the disclosure of the facts of the case, to state the laws of it, and to assure both the public and the prisoner a decision according to the facts and the law by a rational, honest, and sober jury of the prisoner's peers, uninfluenced by passion, prejudice,

or corruption. The legal practitioner who transgresses these well-defined lines of prosecution and defense wilfully and persistently, or who attempts by fraud, perjury, or corruption to win his case, whether by false witnesses, or jury "fixing," or influencing it otherwise than by the facts and the law, should be relentlessly disbarred from the courts of justice. The penalty for such gross malpractice should be so quick, disgraceful, and severe as to interpose the strongest restraint upon the whole profession against the temptation to win victory at the expense of fidelity and honor.

The defense of society against crime enunciates these ethical laws, especially, as inexorably regnant in the trial of criminals, among those definitely enacted or established by courts :

1. *That it is the main object of the trial to enforce obedience to law.*

2. *That it is the exclusive purpose of the trial to determine the measure of the guilt or the innocence of the accused by the full disclosure of all the facts and law pertinent to the case.*

3. *That it is the supreme duty of the judge to compel rigid conformity to law in every process of the trial ;* in the selection of a trustworthy jury, in the introduction of evidence, the examination of witnesses, and all the conduct of the trial, both by the prosecuting attorney and the advocate for the defense. He must extend the ægis of the law with equal firmness over society, which has been wronged ; the defendant, who is accused ; the jury, by whom

the fate of the prisoner must be decided ; the witnesses who are called to testify, and the lawyers engaged in prosecution and defense. It devolves upon him to protect jurors from corruption, bias, prejudice, improper evidence, undue influences, insult, and revenge ; witnesses from impertinent questioning, confusing examination, ungentlemanly insinuations, badgering, and unnecessary self-credit of their own testimony ; the accused from illegal evidence and perjured testimony ; and to impose upon him a sentence which shall seem best designed to permanently transform him from a transgressor into a willing subject of law.

As the laws are held to be the enacted common sense of justice, right, truth, and honesty ; and the purpose of trials is to dispense justice, protect right, discern and establish truth, and vindicate honesty, it is essential to the supremacy and public confidence in the utility of laws that trials of criminals shall be conducted with scrupulous respect to these cardinal principles, whether the enacted statute or the recognized precedent has made provision for an unusual dilemma, or exigency, or not. The right of a prisoner to a speedy trial, and the equal right of society to a quick, fair, and honest decision concerning his guilt or innocence also, constitute frivolous objections and exceptions, technical conventions, finical observance of overelaborated rules of evidence, the introduction of unnecessary testimony to prove what is known to be true, or has been already proved, unlimited discussion by counsel,

endless disputation of side issues, the almost unlimited liberty of appeal, motions for delays, postponement, and new trials, actual violations of these essential principles of law and obstructions to its execution which it is the duty of the judges to prevent. Therefore ;

4. *Judges should control the conduct of trials by all the court officials in accord with the established principles of justice, right, truth, and honesty.*

It is not an uncommon occurrence for juries to bring in a verdict which is manifestly unsupported by evidence, or palpably contrary to the evidence, the law, and the common-sense principles of justice, right, truth, and honesty. Within a few days the newspapers have reported the acquittal by a jury of a man violating a Sunday law by playing golf on club links in the State of New York, although instructed by the Court that the act, which was proved and not denied, was a violation of the law ; that another jury in the same State had brought in a verdict that they had "agreed to disagree," for which they were properly fined by the Court ; the finding a verdict of "not guilty" (with half of the costs laid on the prosecutor, the agent of a citizens' league), in favor of a man proved guilty by three credible witnesses of selling liquor on Sunday, no defense having been made, in a Pennsylvania court ; and that the judge discharged the jury without even a rebuke. This is a shocking travesty of justice, which strikes at the sanctity and value of the system of jury trials. It is a violation of the

juror's oath administered by the Court, in the very face and presence of the Court; a contempt of Court; a shameless effrontery of heinous criminal perjury which should never be permitted to escape swift and condign punishment. If such a contumacious and criminal jury, however unimportant the case concerning which they have perjured themselves, should be bodily conducted from the jury box to the reformatory, under an indeterminate sentence, occasionally, it would contribute greatly to the public respect for law. The authority conferred on the jury to judge the evidence confers no power to judge the law, or decide whether it is good or bad. The making and repeal of law is the province of another branch of government. The juror is sworn to decide upon the evidence as it is presented, according to the law as it has been enacted. A verdict contrary to the law or the evidence, or unsupported by evidence, is without warrant, and absolutely void. It is impossible that a verdict should be just or right which violates the oath of the juror; to execute and sustain law by breaking the law. Justice and the social welfare require, therefore :

5. *That judges shall compel juries to have respect to their oaths of office, and to conform strictly to the principles and statutes of law in their verdicts, as well as in their constitution and conduct.* It is his duty to effect this by the summary infliction of severe exemplary punishment for palpable violations of these principles. The guardian of the laws must

certainly enforce obedience to them in his own presence, and during the very administration of them.

In order to prevent the discrediting, weakening, and final abandonment of this safeguard of personal liberty, good citizens should be willing to make great personal sacrifices of time and convenience when drawn to discharge this important function of citizenship. It is one of the principal requirements of patriotism, not to be ignored or refused except for the gravest reasons. The damage done to society and to the government of law by compelling this duty to be performed by the less qualified far outweighs any ordinary personal sacrifice of the busiest of men. It is a principle of penological ethics as well as of government by law :

6. *That the duty of good citizens to serve the State on juries cannot be avoided with impunity; and*

7. *That judges shall exact this service of all who are legally drawn except when the gravest reasons afford a sufficient excuse.*

The public prosecutor is the legal representative of society in the trial of persons accused of crime. His position is one of grave responsibility and notable dignity. He personifies the people and the power of the laws before the court. He is not only required to maintain the supremacy and insure the efficiency of the laws, by legally proving the guilt of every criminal beyond a reasonable doubt, if it is possible, and procuring his conviction

and sentence, but he must do this quickly, in order to secure the full utility of the laws, which depends quite as much on the celerity as the certainty of their execution; "justice delayed is justice denied." There is not only no authority for the prolonged imprisonment of an accused person, whom the laws presume to be innocent until he is proved to be guilty, but the Constitution specially guarantees a speedy trial to every one arrested. Unnecessary delay of trial is both a violation of this constitutional right, and a wrong to society sometimes greater than the alleged crime, by the imposition of an extravagant expense upon it for the maintenance of the prisoner under guard while awaiting trial. It is, therefore,

8. *The first duty of the public prosecutor to obtain a speedy trial of every one accused of crime.*

Experience has very fully defined by law and precedent the extent and limitations of the rights and powers of the prosecutor in the procedure of trials, but the regulations for defendants are naturally very difficult and less rigid. The ethical principles which should govern lawyers engaged in the defense of accused persons have been formulated as rules by a distinguished lawyer of Illinois in an address before the John Marshall Law School of Chicago as follows :

" 1. If you once undertake the defense of a man, whether or not he can compensate you with money, stand by him to the last, no matter what the prejudice or opposition may be against him. His lawyer's fidelity must be persistent and unchange-

able. Yet that fidelity does not signify, nor imply, that the advocate should ever suppress his individual conscience, sacrifice his own manhood, or violate any law of good morals. And so it may be said :

"2. That it is a lawyer's duty to maintain persistently the legal presumption of his client's innocence and insist on the State's proving the truth of its position beyond all reasonable doubt. This is the law, as it is the right, of every case.

"3. Present every truthful fact which will tend to maintain the presumption of innocence, and every proposition of law, fairly and frankly, which may tend to hold the State rigidly to the obligation imposed upon it, to establish the guilt of the defendant beyond reasonable doubt.

"4. Never knowingly allow a false witness to testify in behalf of your client. No righteous demand of fidelity requires such conduct on the lawyer's part.

"5. 'To thine own self be true ; thou canst not then be false to any man.'

"6. In the face of damaging testimony plead every mitigation and extenuation which appear from the evidence. For there is a certain equity recognized and approved, as supplemental to the law, in the practice of even its criminal branch. Thus, a poor man steals bread for his starving wife and children. Judged by the letter of the law he is guilty of larceny, but its spirit as related to this particular case justifies his escape from punishment, and his advocate's urging upon the trial jury the justifying circumstances of the offense. * * *

"8. Do not think that every defendant should go to trial. In case of legal guilt, in which the State, in your judgment, can conclusively remove the presumption of the innocence of your client and establish his guilt beyond a reasonable doubt, it is wise policy, in most cases, to allow him to plead guilty and then to urge his equities and extenuations upon the Court who is to impose the sentence."¹

Negligence in the observance of the abovementioned

¹ *Thoughts on Criminal Law*, by Hon. Luther Laffin Mills. Address to the John Marshall Law School, Chicago, April, 1901.

tioned principles has contributed largely to the failure of our existing criminal codes to restrict crime. The codes have inherent defects which in themselves conflict with the fulfilment of their purpose, but the grave faults which have, by degrees, crept into the manner of their execution deprive them of much of their possible utility. Whatever protection against crime society might expect or derive from the punishment of it by law depends upon the inevitable certainty of the prescribed penalty as a consequence of crime. The final reaction of violated human law must be as sure as the recognized consequence of the violation of a law of nature, or of God. By as much as the hope of escape is encouraged, the fear of the law vanishes, and its potency diminishes. So, also, the farther in time the punishment is removed from the transgression, the more attenuated and indistinct does the natural connection between cause and effect become. The punishment which is delayed loses its terrors in its perspective.

Certainty and celerity are the two great sources of the power of punishment to prevent crime, which has been shown to be its chief legal function.

It should therefore be the controlling motive and constant effort of every public official and patriotic participant in the trials of criminals to make these, next after justice, the predominant and impressive features in the administration of criminal law. The consummate product of human experience and wisdom for social protection, the majestic

instrument of social justice, the machinery of the laws, must not be permitted to become so complicated by overrefinement of technicalities as to consume its power and speed in useless friction of operation. Society requires its lawyers, who are its legal engineers, just as railroad managers require their locomotive engineers, not only to bring their charges in safety to their destination, but to bring them there at the proper time, in order that the business of life may proceed prosperously without disorganization. The attention of the legal profession should be concentrated on facilitating the operation of law, and upon the removal, and not the devising, of obstructions to its execution.

CHAPTER XXI.

A COMPENDIUM OF THE PRINCIPLES OF SCIENTIFIC PENOLOGY.

WE shall now recapitulate the several principles or laws which have been formulated in the preceding chapters of this book, as recognized and accepted by intelligent penologists to be axiomatic and indisputable. We do this for convenience of reference and citation, as well as to mark out concisely the individual and particular elements of the science, which constitute it an entire system. The future experiments and discoveries of those who devote themselves to the investigation of the causes and cure of the social disease of criminality may modify or extend our knowledge of these principles, and develop the science in special directions ; but we believe that mankind has reached, already, an understanding of the fundamental laws which govern the whole subject. The laws of the science now known are sufficient, if wisely executed, to afford a remedy for this fearful social affliction. If men will cease to confine their attention to the overt act, and will legislate according to these principles for the treatment of the presumptive as well as the actual transgressor, the criminal class will

certainly begin to decrease, and soon cease to be a serious menace to society. Science can subdue criminality just as it has subdued typhoid fever, smallpox, diphtheria, and other formerly dreaded diseases. It will hereafter suffer just as much from these scourges as it deserves to suffer on account of its neglect to enforce the general observance of measures of protection.

Several of the following laws are identical in their essence; but, as logical deductions from different premises, they are restated in a modified form in order to present rather a changed phase of the principles than another law. The whole code might be reduced to simpler dimensions, but it would be at the sacrifice of definiteness of adaptation. The laws are here given as they have crystallized in the three sections of the work, with references to the chapter and page where they originally found expression.

LAWS OF THE SECTION OF DIAGNOSTICS

General Laws

1. The scope of penal legislation must comprehend the whole criminal class: its origin, its constituents, its ætiology, and its therapeutics. Chap. ii., p. 20.
2. Criminal codes must be designed to reform the moral depravity of culprits. Chap. ii., p. 25.
3. Society must assume parental functions over all children lacking proper parental training, unless

it can compel their exercise by parents. Chap. ii., p. 26.

4. Criminal jurisprudence must provide for the proper separate care and training of neglected and delinquent children, and juvenile offenders. Chap. ii., p. 28.

5. All wilful violations of law are crimes of some degree. Chap. iii., p. 31.

6. The proper object of legal penalties is to secure obedience to the law. Chap. iii., p. 32.

7. The cause of crime is the moral depravity of the criminal. Chap. iii., p. 37.

8. Criminality is a diseased condition of human character. Chap. iii., p. 39.

Special Laws

9. Society must secure protection from crime, and the social disease of criminality, by treatment of individual criminals. Chap. iii., p. 40.

10. The diminution of crime can be effected only by the confinement of all detected criminals until their moral depravity is reformed. Chap. iii., p. 43.

11. The cure of moral depravity in the criminal consists in the elimination of the cause of the degeneration of the organs of character, and the restoration of their normal functions. Chap. iii., p. 43.

12. The recorded convictions for crime cannot certainly indicate either increase or decrease of criminality, unless we consider concomitant laws and their execution. Chap. iii., p. 45.

13. The restriction of criminality depends mainly upon the prevention of the disease of moral depravity. Chap. iii., p. 50.

14. Every person convicted of crime must be kept in confinement until cured of the disposition to commit crime. Chap. iv., p. 54.

15. Convicts in confinement need, and are entitled to receive, from the power which confines them, skilful professional treatment. Chap. iv., p. 56.

16. A correct diagnosis of the nature of the particular kind of disease with which each convict is affected is essential to his cure. Chap. iv., p. 58.

17. A positive, accurate, and unmistakable identification of every person infected with the disease of criminality is necessary for the protection of society. Chap. iv., p. 59.

18. The fear of punishment does not restrain crime. Chap. v., p. 77.

19. The penalty inflicted upon criminals for each specific crime, to be useful, must be immediate, uniform, and certain. Chap v., p. 84.

20. The punishment of all convicts must be administered by the lawmaking authority. Chap. v., p. 88.

21. Special reformatories, under the management of experts, must be established for the treatment of common drunkards and prostitutes. Chap v., p. 89.

22. Crime is the unmistakable symptom of disease,—dangerous, persistent, contagious, and endemic. Chap. v., p. 90.

23. All sentences of confinement must have only a minimum limit for retribution, and be continuous thereafter until the convict is declared cured by competent authority. Chap. v., p. 93.

24. Every developed case of the disease of criminality must be cured before society is again exposed to its attack. Chap. vi., p. 98.

25. The State must provide skilled penologists to superintend the treatment of all convicts. Chap. vi., p. 106.

LAWS OF THE SECTION OF THERAPEUTICS

General Laws

26. Punishment is a necessary sequence of crime and an inherent prerogative of the law-making power. Chap. vii., p. 113.

27. The punishment must be fitted to the criminal, rather than to the crime. Chap. vii., p. 114.

28. The element of full expiation is now excluded from the punishment imposed by human laws, which is restricted to the function of protecting society. Chap. vii., p. 115.

29. Reformation is the cure of the abnormal and diseased condition which prevents obedience to law. Chap. vii., p. 116.

30. Legal penalties are deterrent in proportion to the popular estimate of disgrace which pertains to them. Chap. vii., p. 118.

31. Every real criminal must be confined in prison so long as he will be dangerous at large. Chap. vii., p. 126.

32. The State must provide reformatory prisons for the first confinement of her convicts, and confine them in such reformatories under the indeterminate sentence. Chap. vii., p. 127.

33. Temporary imprisonment must never be imposed as a penalty when any other can be made to satisfy the conditions. Chap. vii., p. 129.

34. All sentences of imprisonment should be undetermined in duration, and continuous until the convict is cured. Chap. viii., p. 156.

35. The disease of criminality can be cured. Chap. ix., p. 161.

36. The normal action of the system depends upon the healthy condition of all its organs. Chap. ix., p. 167.

37. "The soul of all improvement is improvement of the soul." Chap. ix., p. 169.

Special Laws

38. Drunkenness is a disease of both the physical and moral character, which yields to treatment as readily as do other diseases. Chap. x., p. 201.

39. Special asylums are needed in every State for the treatment of inebriates, in which the laws should direct their confinement under the indeterminate sentence. Chap. x., p. 204.

40. The right and obligation of society to deal with drunkenness as a crime is incontestable. Chap. x., p. 205.

41. Prostitution is a crime against the family. Chap. x., p. 206.

42. The suppression of prostitution is also a supreme object of government. Chap. x., p. 209.

43. The law should enforce the examination, by an expert alienist, of every prisoner who shows indications of insanity, or who pleads insanity in defense. Chap. xi., p. 218.

44. There should be official alienists having authority to decide all questions concerning the insanity of persons accused or convicted of crime. Chap. xi., p. 229.

45. Special hospitals for the confinement of the criminal insane and insane convicts must be established apart from prisons and from general hospitals for the insane. Chap. xi., p. 229.

46. Instinctive and habitual criminals should be imprisoned under an indeterminate sentence when they are first discovered. Chap. xii., p. 241.

47. All prisoners arrested for minor offenses should be primarily released upon conditional parole, and returned to prison for its violation. Chap. xii., p. 244.

48. The imprisonment of juvenile and first offenders should be absolutely prohibited, except as a last resort for those convicted of flagrant crimes. Chap. xiii., p. 250.

49. When a limited imprisonment is necessary it must be by separate confinement. Chap. xiii., p. 250.

50. Juvenile and first offenders should never be confined in jails with other prisoners while awaiting trial, or on remand. Chap. xiii., p. 250.

51. The supreme object of the sentence of a convicted juvenile or first offender is his rescue from a criminal life. Chap. xiii., p. 251.

52. The character and circumstances of an accused juvenile or first offender should be carefully investigated and allowed full weight in determining whether he should be tried and convicted or not, and in fixing the kind of sentence which should be imposed upon conviction. Chap. xiii., p. 251.

53. The State should continue its control and supervision of all its discharged prisoners until they have proved their ability to live harmlessly at liberty. Chap. xiii., p. 262.

54. Criminals in confinement should be made to reduce the cost of their maintenance to the greatest possible extent by profitable employment. Chap. xiv., p. 268.

55. All prisoners should be constantly employed in useful and productive labor. Chap. xiv., p. 273.

56. Prison labor should produce all manufactured goods and material for public institutions, unhampered by restrictions, in penitentiaries and prisons; the work in reformatories should be strictly educational; and short-term convicts should be employed on general public work. Chap. xiv., p. 286.

57. No convict should ever be sentenced to jail; nor any minor under school age; nor any insane, imbecile, epileptic, crippled, or diseased person; nor any for whom a special asylum or hospital exists. Chap. xv., p. 292.

58. A State police force is the first general pre-

ventive prescription of scientific Penology. Chap. xvi., p. 320.

59. The marriage or cohabitation of idiots, weak-minded, insane, epileptics, criminals, inebriates, the scrofulous, tuberculous, leprous, and the venereal diseased must be absolutely prohibited. Chap. xvi., p. 321.

LAWS OF THE SECTION OF HYGIENICS.

60. No healthy, normal child should be permitted to grow up in an institution, without family training. Chap. xvii., p. 347.

61. The welfare of society requires that all the minor wards of the State be cared for from their birth until they become honest and independent citizens ; or, if they cannot be made such, that they be retained in confinement to the end of life. Chap. xvii., p. 349.

62. It is the duty of society, through its organized government, to provide proper parental care and training for all neglected, abandoned, and delinquent children. Chap. xvii., p. 351.

63. A complete and general system of public education, which will compel the harmonious and co-ordinated instruction of all children in the triune elements of good citizenship, the physical, the mental, and the moral, up to the age of fifteen years, in either public or private schools, instituted by national and State legislatures, is not only the chief safeguard of free government, but is the cheapest, most comprehensive, and most effective measure for the

restriction and prevention of the disease of criminality. Chap. xviii., p. 388.

64. The State should insure the proper education of all its females in the duties of motherhood. Chap. xix., p. 392.

65. Science pronounces action to be the first law of growth. Chap. xix., p. 400.

66. Every dollar expended by the State in providing for the necessary development of children before reaching school age, is worth ten spent after that in correction and education, and a thousand expended for protection from criminality and in the reformation of criminals. Chap. xix., p. 404.

67. The first duty of the State in the protection of society from crime is to insure the uniform and co-ordinate development and nurture of all its children in their early infancy. Chap. xix., p. 406.

THE ETHICAL PRINCIPLES GOVERNING THE TRIALS OF CRIMINALS

68. That it is the main object of the trial to enforce obedience to law. Chap. xx., p. 422.

69. That it is the exclusive purpose of the trial to determine the measure of the guilt or the innocence of the accused by the full disclosure of all the facts and law pertinent to the case. Chap. xx., p. 422.

70. That it is the supreme duty of the judge to compel rigid conformity to law in every process of the trial. Chap. xx., p. 422.

71. Judges should control the conduct of trials

by all the court officials in accord with the established principles of justice, right, truth, and honesty.

Chap. xx., p. 424.

72. That judges shall compel juries to have respect to their oaths of office, and conform strictly to the principles and statutes of law in their verdicts as well as in their constitution and conduct.

Chap. xx., p. 425.

73. That the duty of good citizens to serve the State on juries cannot be avoided with impunity.

Chap. xx., p. 426.

74. That judges shall exact the services of all who are legally drawn, except when the gravest reasons afford a sufficient excuse. Chap. xx., p. 426.

75. It is the first duty of the public prosecutor to obtain a speedy trial of every one accused of crime.

Chap. xx., p. 427.

76. "If you once undertake the defense of a man, whether or not he can compensate you with money, stand by him to the last, no matter what the prejudice or opposition may be against him. His lawyer's fidelity must be persistent and unchangeable. Yet that fidelity does not signify, nor imply, that the advocate should ever suppress his individual conscience, sacrifice his own manhood, or violate any law of good morals. And so it may be said"

Chap. xx., p. 427 :

77. "That it is a lawyer's duty to maintain persistently the legal presumption of his client's innocence and insist on the State's proving the truth of

its position beyond all reasonable doubt. This is the law, as it is the right, of every case." Chap. xx., p. 428.

78. "Present every truthful fact which will tend to maintain the presumption of innocence; and every proposition of law, fairly and frankly, which may tend to hold the State rigidly to the obligation imposed upon it, to establish the guilt of the defendant beyond reasonable doubt." Chap. xx., p. 428.

79. "Never knowingly allow a false witness to testify in behalf of your client. No righteous demand of fidelity requires such conduct on the lawyer's part." Chap. xx., p. 428.

80. "'To thine own self be true; thou canst not then be false to any man.'" Chap. xx., p. 428.

81. "In the face of damaging testimony plead every mitigation and extenuation which appear from the evidence. For there is a certain equity recognized and approved, as supplemental to the law, in the practice of even its criminal branch. Thus, a poor man steals bread for his starving wife and children. Judged by the letter of the law he is guilty of larceny, but its spirit as related to this particular case justifies his escape from punishment, and his advocate's urging upon the trial jury the justifying circumstances of the offense." Chap. xx., p. 428.

82. "Do not think that every defendant should go to trial. In case of legal guilt, in which the State, in your judgment, can conclusively remove

the presumption of the innocence of your client and establish his guilt beyond a reasonable doubt, it is wise policy, in most cases, to allow him to plead guilty and then to urge his equities and extenuations upon the Court who is to impose the sentence."

Chap. xx., p. 428.

83. Certainty and celerity are the two great sources of the power of punishment to prevent crime, which has been shown to be its chief legal function. Chap. xx., p. 429.

The sum and conclusion of the whole matter is, that criminality is a preventable and curable disease, for which Penology makes these prescriptions. They have been proved in practice, and found efficacious. They cannot be ignored with safety, or neglected with prudence. Neither can society depend upon charity or philanthropy to administer them. The responsibility, the duty, the obligation, rests upon the State to insure, not only the general welfare of the community, but that of every individual of which it is composed. Indeed, the general welfare is the sum of the individual welfares of the people, and is entirely dependent upon it. As the State is that organization which the people effect for the general welfare, its primary office is to insure the individual welfare of every one of its constituents, from the time of birth to the end of life. Scientific Penology is impossible, all social penal effort is futile, or worse than futile, unless it is initiated, directed, and controlled by the

State, so that it shall include every unit of the population within its constant scope and care. The promotion and preservation of the intelligence and morality of every member of the State is as vital to its health, strength, and life as are sound members to the human body.

The unintermitted, continual restraint of the incorrigible criminal, the reformation of the curable, and the wholesome rearing of every child constitute the triplicate solution by Science of the social problem of Criminality.

APPENDIX A.

STATISTICS OF ALL THE CITIES OF THE UNITED STATES HAVING 100,000 INHABITANTS AND MORE IN 1900, SHOWING ESTIMATED ARRESTS AND CONVICTIONS FOR THE YEAR 1899.

	Population.	Total Arrests during 1899.	Arrests for Drunkenness and Disorderly Conduct.	Arrests for Prostitution, Harbory, and Associated Charges.	All Other Arrests.	Arrests for Principal Crimes or Felonies during 1899.	Pleaded Guilty and Convicted of Principal Crimes or Felonies during 1899.	Per cent. of Arrests for Drunkenness.	Per cent. of Arrests or Harbory.	Per cent. of Convictions or for Principal Crimes or Felonies.
1	New York, N. Y.	138,875	44,013	12,591	72,235	10,036	2,128	.317	.091	.131
2	Chicago, Ill.	71,349	40,488	2,422	9,362	19,077	1,261	.567	.034	.066
3	Philadelphia, Pa.	62,075	29,678	882	16,316	15,199	1,375	.478	.014	.060
4	St. Louis, Mo.	26,314	3,668	690	18,149	3,807	426	.139	.026	.112
5	Boston, Mass.	39,760	23,898	598	6,460	8,804	6109	.601	.015	.694
6	Baltimore, Md.	29,335	3,819	131	21,774	3,611	879	.130	.004	.243
7	Cleveland, O.	15,674	7,636	766	4,444	2,828	127	.487	.049	—
8	Buffalo, N. Y.	23,338	10,028	582	9,631	3,079	2,457	.430	—	.668
9	San Francisco, Cal.	27,769	12,775	556	13,211	1,227	203	.460	.020	.165
10	Cincinnati, O.	12,860	1,988	1,264	8,091	1,517	360E	.155	.098	—
11	Pittsburg, Pa.	18,762	4,670	61	13,751	280	174	.249	.003	.621
12	New Orleans, La.	17,609	5,241	1,361	5,955	6,413	1,539E	.298	—	—
13	Detroit, Mich.	7,052	2,004	135	4,766	147	126	.284	.019	.857
14	Milwaukee, Wis.	4,811	1,734	86	1,963	1,028	827	.360	.018	.804
15	Washington, D. C.	25,819	4,151	71	19,023	2,574	1,666	.161	.003	.647
16	Newark, N. J.	6,590	2,076	33	3,706	775	519	.315	.005	.669
17	Jersey City, N. J.	7,679	3,300	25	1,834	2,520	1,826	.430	.003	.724
18	Louisville, Ky.	7,700	1,481	22	5,044	1,153	180	.192	.003	.163
19	Minneapolis, Minn.	5,416	2,323	694	1,321	1,078	470	.429	.128	.436
20	Providence, R. I.	8,663	6,115	110	1,510	928	649E	.706	.012	—
21	Indianapolis, Ind.	5,454	1,019	234	1,457	744	465	.187	.043	.625

22	Kansas City, Mo.....	163,782	12,094	512	1,747	8,505	1,330	150E	.042	.144	—
23	St. Paul, Minn.....	163,632	4,092	1,445	144	2,179	924	58	.308	.031	—
24	Rochester, N. Y.....	162,435	2,498	1,046	—	930	522	344E	.418	—	—
25	Denver, Col.....	133,859	4,500	1,432	—	2,480	588	520E	.318	—	—
26	Toledo, O.....	131,822	3,365	480	95	2,220	570	75	.142	.028	—
27	Allegheny, Pa.....	129,896	2,846	2,117	9	531	189	22	.743	.003	.116
28	Columbus, O.....	125,560	4,010	800E	200E	5,010E	545E	325E	.681	—	—
29	Worcester, Mass.....	118,421	4,954	3,375	117	899	563	304E	.023	—	—
30	Syracuse, N. Y.....	108,374	3,423	2,565E	100E	858E	375E	250E	.534	—	—
31	New Haven, Conn.....	108,027	6,314	3,377	225	1,190	1,522	360E	.035	—	—
32	Paterson, N. J.....	105,171	3,165	1,825	—	568	772	591	.576	—	.765
33	Fall River, Mass.....	104,863	4,491	2,523	191	1,130	647	450E	.561	.042	—
34	St. Joseph, Mo.....	102,979	3,105	760	330	1,589	426	280	.244	.106	—
35	Omaha, Neb.....	102,555	8,186	2,273	384	3,970	1,559	1,223	.277	.047	.784
36	Los Angeles, Cal.....	102,479	3,878	2,199	24	1,149	506	307	.567	.006	.606
37	Memphis, Tenn.....	102,320	4,931	1,088	23	2,603	1,217	133E	.218	.004	—
38	Scranton, Pa.....	102,026	2,635	1,662	262	445	2,196	253	.613	.099	—
	Totals.....	14,208,603	641,991	241,584	27,105	278,259	101,876	29,501	37.6+	28.9+	—
				Per cent. of all.							
121	No. of inhabitants to one arrest.....		2,213	.371		51					
	Cities having over 25,000 and less than 100,000 in- habitants.	5,486,022	247,899E			107,569E	39,354E				
	Total estimated ar- rests in cities.....		889,890			385,828	141,230	40,815			
	Add 10 per cent. for rural arrests.....	56,604,595 76,290,220	88,989			38,582	14,123	4,082			
	Total estimated ar- rests in the United States during 1899		978,879	364,164		424,410	155,353	44,897	37.2	28.9	

NOTE. All the items given are from official reports except those marked E, which were estimated, because no information could be obtained. The numbers of those arrested and convicted for felonies and principal crimes as given are only approximately correct. The number of arrests made for each conviction of felony was 21.8.

APPENDIX B.

STATISTICS OF ILLITERACY, SUFFRAGE, AND CRIME IN THE UNITED STATES FOR 1900.

	Population in 1900.	Per cent. of Illiterates in 1890 of Population over 10 years of age.	Total Republican and Demo- cratic Vote in Presidential Election, 1900.	Popular Majority in Presidential Election, 1900. Republican.	Popular Majority in Presidential Election, 1900. Democratic.	Number of People to each Demo- cratic and Republican Vote Cast.	Annual Average Number of Mur- ders during Decade, 1890 to 1900.	Number of People in 1900 to each Murder of the Annual Average during Preceding Decade.
Alabama.....	1,828,697	41.0	150,037		42,699	12.2	461	3,966
Arkansas.....	1,311,564	26.6	125,942		36,342	10.4	305	4,300
California.....	1,485,053	7.7	289,740	39,770		5.1	422	3,519
Colorado.....	539,700	5.2	215,805		29,803	2.5	252	2,141
Connecticut.....	908,355	5.3	176,586	28,558		5.1	73	12,443
Delaware.....	184,735	14.3	41,423	3,672		4.5	48	3,849
Florida.....	528,542	27.8	35,506		20,508	14.9	157	3,367
Georgia.....	2,216,331	39.8	116,736		46,665	19.0	381	5,817
Idaho.....	161,772	5.1	56,612		2,216	2.9	27	5,992
Illinois.....	4,821,550	5.2	1,101,046	94,924		4.4	315	15,306
Indiana.....	2,516,462	6.3	645,647	26,479		3.9	228	11,037
Iowa.....	2,231,853	3.6	517,073	98,543		4.3	202	11,147
Kansas.....	1,470,495	4.0	348,556	23,354		4.2	235	6,253
Kentucky.....	2,147,174	21.6	461,700		8,098	4.6	398	5,394
Louisiana.....	1,381,625	45.8	67,904		39,438	20.3	358	3,859
Maine.....	694,466	3.3	102,258	28,612		6.8	18	38,581
Maryland.....	1,190,050	15.7	258,483	13,947		4.6	280	4,250
Massachusetts.....	2,805,346	6.2	396,163	81,869		7.1	96	29,222
Michigan.....	2,420,982	5.9	527,954	108,000		4.6	205	11,810
Minnesota.....	1,751,394	6.0	303,362	76,145		5.8	159	11,105

	Population in 1900.	Per cent. of Illiterates in 1890 of Population over 10 years of age.	Total Republican and Democratic Vote in Presidential Election, 1900.	Popular Majority in Presidential Election, 1900. Republican.	Popular Majority in Presidential Election, 1900. Democratic.	Number of People to each Democratic and Republican Vote Cast.	Annual Average Number of Murders during Decade, 1890 to 1900.	Number of People in 1900 to each Murder of the Annual Average during Preceding Decade.
Mississippi.....	1,551,270	40.0	57,459		46,003	27.0	317	3,001
Missouri.....	3,106,665	9.1	666,006		37,820	4.7	362	8,582
Montana.....	243,329	5.5	62,519		11,773	3.9	90	2,704
Nebraska.....	1,068,539	3.1	235,848	7,822		4.5	168	6,360
Nevada.....	42,335	12.8	10,196		2,498	4.2	39	1,086
New Hampshire....	411,588	6.8	90,287	19,309		4.6	9	45,732
New Jersey.....	1,883,669	6.5	386,515	56,899		4.9	120	15,697
New York.....	7,268,012	5.5	1,500,378	143,606		4.8	512	14,195
North Carolina....	1,893,810	35.7	290,833		24,671	6.5	285	6,645
North Dakota.....	319,146	6.0	56,410	15,386		5.7	29	11,005
Ohio.....	4,157,545	5.2	1,018,800	69,036		4.1	332	12,523
Oregon.....	413,536	4.1	79,911	13,362		5.2	79	5,235
Pennsylvania.....	6,302,115	6.8	1,136,897	288,433		5.5	312	20,196
Rhode Island.....	428,556	9.8	53,596	13,972		8.0	52	8,241
South Carolina....	1,340,316	45.0	50,808		43,711	26.4	221	6,064
South Dakota.....	401,570	4.2	94,074	14,986		4.3	45	8,924
Tennessee.....	2,020,616	26.6	268,258		22,242	7.5	408	4,957
Texas.....	3,048,710	19.7	398,073		136,782	7.7	1,021	2,986
Utah.....	276,749	5.6	92,038	2,155		3.0	57	4,855
Vermont.....	343,641	6.7	55,418	29,719		6.2	6	57,274
Virginia.....	1,854,184	30.2	261,945		30,215	7.1	305	6,079
Washington.....	518,103	4.3	102,289	12,623		5.1	102	5,079
West Virginia.....	958,800	14.4	218,642	21,049		4.4	87	11,021
Wisconsin.....	2,069,042	6.7	425,151	106,581		4.9	154	13,435
Wyoming.....	92,531	3.4	24,646	4,318		3.8	22	4,206
Totals.....	74,610,523	13.3	13,575,530	1,443,129	581,484	5.5	9,754	7,649

APPENDIX C.

NUMBER OF HOMICIDES, EXECUTIONS, AND LYNCHINGS
IN THE UNITED STATES COLLECTED BY THE *CHI-
CAGO TRIBUNE* FROM NEWSPAPER REPORTS FOR
EIGHTEEN YEARS.

Year.	Suicides.	Homicides.	Hangings.	Lynchings.
1882.....		1,467.....	121.....	117
1883.....		1,697.....	107.....	135
1884.....		1,465.....	123.....	195
1885.....		1,808.....	108.....	181
1886.....		1,499.....	83.....	133
1887.....		2,335..	79.....	123
1888.....		2,184.....	97.....	144
1889.....		3,567.....	98.....	175
1890.....		4,290.....	102.....	126
1891.....		5,906.....	123.....	195
1892.....		6,791.....	107.....	235
1893.....		6,615.....	126.....	200
1894.....		9,800.....	132.....	190
1895.....		10,500.....	132.....	171
1896.....		10,652..	122.....	131
1897.....		9,520.....	128.....	166
1898.....		7,840.....	109.....	127
1899.....		6,225.....	131.....	107
1900.....		6,755.....	8,275.....	119.....
				115

INDEX

A

- Abnormals require more than penalties, 116
- Action and reaction measure punishment, 113
- Alienists, expert, to be called by State, 214; 229
- Allen, Prof. W. H., constitutionality of State police, 323
- Allison, Dr. W. E., life convicts in Matteawan, 213; on insanity and homicide, 215; high criminals in Matteawan, 217; criminal insane, 227-231
- American Government Christian, 383
- Appellate court for discharge of prisoners, 150
- Approximation, limits of, 60
- Arrests and convictions in United States, and costs, 312
- Asylums for defective children, 349

B

- Barrows, Hon. S. J., reformatory system in United States, 133; 261
- Bertillon system of identification, 60; described, 62, 65; for census use, 66; a system, 67; use with immigrants, 68, 69; defence against recidivism, 99; central bureau at Washington, 99; proof of personality, 142; records in reformatories, 180; district centres proposed, 288
- Bible in American institutions, and history, 384
- Birth- and death-rate in France, 208
- Booth, Ballington, Hope Halls, 261
- Boston, document 158; varieties of crime in, 314
- Breese, Justice, definition of crime, 30
- Brinkerhoff, Gen. R., quoted, 55
- Brockway, Z. R., prison science

- working out a system, 5; degrees of depravity, 24; quoted, 55; recidivism, 97; father of reformatories, 134; demonstration of, 159; per cent. of failures, 160; number of convicts observed, 162; characterization of criminals, 162; classification of, 164; on habitude, 166; on conditions of release, 185; convicts from institutions, 336
- Buckle, quoted, 29
- Burglary, penalties for, in New York, 142
- Bushnell, Dr. Horace, epigram on reformation, 169

C

- Capital crimes, indeterminate sentences inapplicable to, 157
- Cassidy, Michael, 55
- Castration for sexual crimes, 92; 123
- Children, police care of, in public places, 322
- Christian, American government is, 383
- Christian theory of reformation, 159
- Chronic incorrigibles, 188
- Church and State, religious separation of, 365
- Citizenship, elements of good, 365
- Civilization gauged by public morality, 380
- Clement XI. built St. Michaels, 135
- Convicts, in Pennsylvania, 8; proportion to crimes, 51; State control of, 103; entitled to State care, 105; average age of, 163; per cent. fit for military drill, 178
- Cooperage, effect of prison labor on, 268
- Corporal punishment of prisoners, 307
- County jails, W. F. Spaulding on, 104

- Crime, costs in Pennsylvania, Massachusetts, and United States, 10; Dr. Eugene Smith's estimates, 11; prevention of, 14; defined, 18, 30; variations in, 18; statistics of, 18; ethical divisions of, 31; classified in United States census, 33; culpability, 34; symptom of a condition, 35; causes of, 37; cures, 40; extraneous causes of, 44; illiteracy, 47; a violation of State law, 87.
- Crimes, proportion unpunished, 75; resulting from drunkenness, 198
- Criminal class, number in United States, 7; in Massachusetts, 7, 8; law of criminal saturation, 15; composition of, 17; defined, 17; variation in numbers due to changes in laws, 18; necessity of class treatment, 19; proportion to population, 19; Dr. Drähms' categories, 20; 22; recruited from resumptive class, 25
- Criminal codes, as antiquities, 6; purpose of, 25; failure of, 32; cruelty of early, 73; should regard criminal, rather than the crime, 92; uniformity necessary, 100; foundation of all codes, 419
- Criminal lawyers, practice of, 421
- Criminality, to be cured as a disease, 14; natural to the savage, 16; how suppressed, 19; diagnosed, 27-58; a disease, 38; 141; prognosis of, 160
- Criminals, age and sex of, 9; presumptive defined, 20; moral depravity of, 22; differences in appearance, 24; require expert treatment, 55; insane in United States, 223; laboratories for study of, 305
- Crises in American history, 388
- Croup, per cent. of cures of, 160
- Cruelty of early codes, 73
- Cummings, Prof. E., penal aspects of drunkenness, 202
- D
- Death, in infancy preferable to a criminal life, 413
- Death penalty, 76; where abolished, 119; discussed, 121
- Defectives, mathematical, 173; control, 174; general, 174; parental training of, 356
- Depravity, moral, universal among criminals, 24
- Development, arrested, Prof. Ferrero on, 357
- Devine, E. T., on care of dependent children, 351
- Diagnostics of penology defined, 13
- Dietary in Reformatories, 175
- Discharge, of the reformed, 148; tribunal of, 154; appellate court for, 156; of insane criminals, 232
- Discipline, by physical pain, 179; by demerit marks, 184; prison, 303
- Diseases, per cent. of cures, 160; which induce crime, 49
- District centres for Bertillon system, 285
- Doe, Judge, on responsibility, 223; insanity a disease, 225
- Drähms, Dr., categories of criminals, 20; 22; the occasional criminal, 23; environment and crime, 48; recidivists, 96, 234; imprisonment, 129; appearance of recidivists, 237; juvenile offenders, 247
- Drunkenness, arrests for, 88; reformatories for, 88; a sin, 193; Sir Matthew Hale, Draco, Lycurgus, Dr. Harris on, 194; in Massachusetts, 195; arrests for, in Suffolk Co., Mass., 197; per cent. of criminality resulting from, 198; a crime of first magnitude, 198; causes of failure to suppress by law, 199; plea in mitigation, 199; a curable disease, 200; poverty and pauperism traced to, 200; penal aspects of, 202; sentences for, 205
- E
- Education, overcrowding in schools, 46; Washington on, 359; congressional action on, 360; other Presidents on, 361; United States Commissioners' report on, 364, 369, 373; moral, neglected, 367; national control of, 371

Edwards, Jonathan, family of, 327
 Elmira Reformatory, per cent. of depravity among the inmates, 24 ; per cent. of cures in, 126 ; 175 ; of failures, 156 ; age of inmates, 163 ; per cent. of inmates used to mechanical work, 166 ; daily routine in, 172 ; trades classes, 175 ; technical training in, 175 ; military drill at, 176 ; intellectual studies at, 180 ; merit and demerit marks in, 184 ; earnings of paroled prisoners, 186 ; term of securing parole, 187 ; cost of, 191 ; cost of maintaining inmates, 191 ; ancestry of inmates, 248 ; home life of inmates, 354
 Emerson, R. W., on cause and effect, 112
 Endlich, Judge, on expert testimony, 225
 English, development of Teutonic codes, 72 ; reformatories, juvenile offenders in, 247
 Epileptics, irresponsibility of, 220
 Expert criminologists needed, 55
 Expert testimony, Judge Endlich on, 225

F

Fear, no deterrence from crime, 76
 Female convicts, disproportion of, 88 ; reformatories, 192 ; 296
 Ferrero, Prof., on arrested development, 357
 Ferri, Prof., law of criminal saturation, 15 ; categories of criminals, 22 ; on unpunished crimes, 75 ; on recidivists, 234
 Fichte's social contract, 115
 Fines and imprisonment, separate penalties, 157 ; to be worked out, 253 ; 284
 First offenders, treatment of, 128
 Folks, Homer, on State aid to institutions, 351
 Foreign population of our prisons, 68 ; names on criminal court calendars, 69
 France, birth- and death-rate in, 208
 French code, responsibility for crime by, 222
 Froebel, Fred., inventor of Kindergarten, 402 ; speech at Luben-

stein, 403 ; appeal to German wives, 405

G

Garrett, Hon. Philip C., disproportion of female convicts, 88
 German code on responsibility of the insane, 222
 Grant, Gen. U. S., on public education, 361

H

Habit, law of, Dr. C. W. Warner, 165
 Habitual criminals, treatment of, 85 ; Morrison on, 239 ; J. J. Lytle on, 242
 Hale, Sir Matthew, on drunkenness, 194
 Harris, Dr. E., on drunkenness, 194
 Henderson, Prof. C. R., on prison laboratories, 309
 Heredity, 326
 Hospitals, children's, 348
 Humbert, King, murderer of, identified, 66
 Hygienics of Penology defined, 13

I

Illiteracy not cause of crime, 46
 Illiterate voters in United States, 358
 Immigrant children, infant nurture of, in United States, 400
 Immigrants convicted of crime to be returned, 70
 Imprisonment for certain crimes as punishment, 125 ; for life, 125 ; cruelty of unlimited, 152
 Incorrigibles, chronic, 188
 Indefinite sentences, where used, 143
 Indemnification, State to secure, 130
 Indeterminate sentences applicable to all, 90 ; where adopted, 143 ; physical obstacles to, 144 ; metaphysical obstacles, 145 ; Dr. C. T. Lewis on constitutionality of, 146-153 ; inapplicable to capital crimes, 157
 Industrial schools the primaries of reformation, 293, 346

Innocence, legal safeguards of, perverted, 78
 Insane, the responsibility of, by German, French, and New York codes, 222; hospitals for criminal, 231; discharge of criminal, 232; asylums for criminal, 299
 Insanity, plea of, in defence, 214; importance of, 216; responsibility in, 219; the "wild beast" law of, 221
 Inspectors of State prisons, 83
 Instinctive criminals, treatment of, 85
 Institutions, life in, fruitful of criminality, 336; modern child-saving, 337; classes of, needed, 344; State aid to private, 350
 Intellectual culture in Elmira, 180

J

Jails, Dr. Eugene Smith on, 129; county, use for, 290
 Jefferson, Thomas, on public education, 361
 Johnson, Mrs. Ellen C., 192
 Judges, discretion of, in sentencing, 81; duty of, in criminal trials, 424
 Jukes, the family of, 328
 Juries, duty of good citizens to serve on, 429
 Jury trials, abuse of, 79; illegal verdicts by, 427
 Justice, origin of idea, and of legal penalties, 114
 Juvenile offenders, not to be confined with criminals, 101; probation officers for, 131; crime increasing, 245; defined, 246; in English prisons and reformatories, 247; courts, 342

K

Kant, on expiation, 115
 Kellor, Francis A., the criminal negro, 400
 Kindergartens, advantages of, 407; of San Francisco, 407; train mothers, 407; Dr. Harris on, 409; normal schools for teachers of, 409; where to be established, 411;

State should provide, 412; in orphanages, 413; growth and cost of, in United States, 493

L

Laboratories, for study of criminals, 305
 Laloue, M., on contamination by association, 251
 Law, of criminal saturation, 15; human, enacts public opinion, 122
 Law and crime, relation between, in Massachusetts, 313
 Law of balance, Froebel's, 404
 Lawyer, on trial as well as client, 419; responsibility of, proportionate to talent, 422
 Lecour, M., on prostitution, 208
 Legal technicalities perverted, 80
 Lewis, Dr. C. T., on fixed penalties, 142; on indeterminate sentence, 146; 153
 Life terms discussed, 127; an objection to indeterminate sentence, 155; convicts, in Matteawan, 213
 Limited sentences cause discharge of worst criminals, 161
 Lincoln, A., no adequate punishment possible for assassin of, 114; on public education, 361
 Lombroso, Prof., occasional criminals, 23
 Longfellow, H. W., on "Law of Balance," 404
 Lytle, J. J., on habitual criminals, 242

M

Madmen, criminal, category neglected, by Dr. Drähms, 21, 56; treatment of, 85
 Malpractice to treat criminals ignorantly, 55
 Marriage, power of State to regulate, 325; Drs. Strahan and McKim on, 326; restriction by law, 330
 Marshall, Chief Justice, on limits of responsibility, 221
 Martha's Vineyard, 53

Massachusetts, arrests in, in 1898, 8 ; cost of crime in, 11 ; criminal history in, 44 ; statistics of crime in, 48 ; non-resident convicts in, 71 ; reformatory prison for women in, 192 ; crime in Suffolk Co., 195 ; bureau of statistics on crime, 195, 196 ; arrests for drunkenness in, 197 ; non-resident criminals in, 241 ; probation in, 255 ; analysis of sentences in, 255 ; *Prison Association Bulletin*, 257 ; cost of unnecessary sentences, 257 ; relation between law and crime in, 313

Maternal nurture of infants, 393 ; evil of lack of instruction, 396

Mathematical defectives, 173

Matteawan insane hospital, life convicts in, 213 ; murderers in, 217

Maudsley, Dr., on responsibility of the insane, 222 ; in mental disorders, 238

McClaghry, Maj. R. W., cited, 55 ; introduced Bertillon system, 64

McKim, Dr., heredity and human progress, 53, 326

McKinley's election, effect on national wealth, 358

Mechanical work, per cent. of Elmira inmates used to, 176

Medicine, Public hygiene, and state of, in United States, 160

Mental training in schools, 379

Merit-marks in reformatories, 184

Military drill at Elmira, 176 ; per cent. of prisoners fit for, 178

Military spirit cultivated by a State police, 321

Mills, Hon. Luther Laflin, on criminal law, 420 ; rules for defendants, 431

Moral depravity the cause of crime, 37

Moral responsibility for crime, 43

Moral training should be chief object of schools, 381

Morality, public, the gauge of civilization, 380

Mothers, good, equal to two generations of good fathers, 395 ; influence of Kindergartens on, 408

Murder, penalty for, 121

N

National Bureau of Identification, 65 ; National, or control of education, 371

Negro children, infant nurture of, in United States, 400

New York City, proportion of convictions to arrests in, 75 ; recidivists confined in, 97 ; prison labor in, 107 ; comparison of prison and reformatory results, 136 ; code, on responsibility, 222

Non-resident convicts in Massachusetts, 71, 241

Normal man, what is the? 38 ; Normal schools for instruction of teachers, 391

O

Offend, to, an infant, is to injure, 415

Offenders, the single, 23, 57 ; treatment of, 128

Opinion, public, laws the enactment of, 122

Orphanages, Kindergartens in, 413

Overt act alone subject to laws, 77

R

Recidivists, number of, in confinement, 74 ; half the prisoners, 96 ; most dangerous criminals, 96 ; Brockway's estimate, 97 ; cost to public, 97 ; restriction necessary, 97 ; in New York prisons, 97 ; defence from, 98 ; proportion of, 234 ; characteristics of, 235 ; 237 ; Paul's description of, 236 ; cost of, in United States, 315

Reformation, the cure of abnormality, 116 ; a punishment, 139 ; a punitive reaction, 140 ; motive, contrasted with the punitive, 141 ; a Christian theory, 159 ; cash savings by, 161 ; philanthropic object, 161 ; five elements of, 162 ; three lines of direction, 167 ; intellectual, 168 ; chaplains in, 168 ; means to be used, 169 ; time needed for, 187 ; cost of, compared with prisons, 191

Reformatories, and prisons in New York, 136; credits and debits in, 171; promotion in grades, 171; dietary, 175; studies, 180; ethical and moral training in, 182; merit and demerit marks, 184; labor in, 185; limited commitments to, 185; number to be designed for, 190, 294
 Reformatory system in United States, 164, 166
 Reign of law, the, support of lawyers to, 418
 Responsibility in insanity, 219, 220; Judge Doe and Justice Perley on, 223
 Retribution assumed by the State, 73
 Routine, daily, in Elmira Reformatory, 172

S

Sanborn, F. D., quoted, 55
 Sanger, Dr., on prostitution, 207
 Savage man a criminal, 15
 Schaffer, Dr., on high schools in Pennsylvania, 375
 Schools, public, failure of, 363; per cent. of attendance in, 363; brief attendance in, 364; Berlin averages, 364; boards, 368, 377; teachers unfit, 365; pay of teachers, 369; expenditures for, in United States, 377; physical training in, 378; mental, 376; moral, 381; opening exercises, 386; sectarianism to be avoided, 387
 Sexual crimes, penalties for, 123; castration for, 192
 Sherborn Reformatory for women, 192
 Signalments, by Bertillon system, 60
 Single offenders, treatment of, 86
 Smallpox, per cent. of cures of, 160
 Smith, Dr. Eugene, costs of crime, 11, 334; on prisons, 129; indeterminate sentence, 141; parental discipline, 395
 Sociology founded on Penology, 4
 Spanking, a means of discipline, 179
 Spaulding, W. F., on jails, 104
 Spencer, Herbert, plan of education, 376; normal reaction of

wrong, 387; instruction in duties of parents, 389, 402
 State, supervision of children, 102, 338, 399; control of all criminals, must execute its laws, 103; duties to convicts, 105, 106, 188; prison commissioners, 155; duty to presumptive criminals, 333; minor wards classified, 338; care over minors, legal requisites for, 341; system needed for care of dependents, 352; control of school system, 372; to provide Kindergartens, 412; moral obligations to infants, 415
 Stephen, Sir J. F., criminal law, 31
 Strahan, Dr., on drunkenness, 194; heredity and marriage, 326
 Streets and public places, police care of children in, 322
 Superintendent of reformatories, 183
 Supplies, purchase and issue of, in reformatories, 179
 Swett, Prof., children to be taught to *do* what is right, 386
 Synectic causes of crime, 41

T

Taney, Justice, definition of crime, 30
 Teutonic codes, English development of, 72
 Thayer, on evidence, 81
 Thefts and robbery in the U. S., amount of, 12
 Therapeutics of Penology defined, 13
 Thorp, Jos. G., penal aspects of drunkenness, 202
 Tracy, Justice, the "wild beast law," 221
 Trades classes and technical training in Elmira, 175
 Trial, speedy, due to both sides, 430
 Tribunal of final discharge, 154
Tribune, Chicago, statistics of murders, 84, executions, 120
 Truant schools, organization of, 345

U

Uniformity of criminal codes necessary, 100
 United States, proportion of convictions to arrests in, 75; murders in, 84

V

Vicious, the incurably, disposition of, 189

W

Wardens, power of discharge, 149 ; difficulties of, 150

Warner, Dr. C. W., law of habit, 165 ; on clean newspapers, 181

Warner, Judge E. M., the sober man's burden, 200

Washington, on public education, 359

Whipping, for certain crimes, 124

Wines, Dr. F. H., changes in criminal law, 35

Wines, Drs. E. C. and F. H., *quoted*, 55 ; on penalties, 118 ; homicides, 119 ; murders and executions, 119 ; salvation by love, 184

Winship, Dr. A. E., the Jukes-Edwards families, 326

Wistar, Gen. I. J., delay of trials, 80

Wives and mothers, Froebel's appeal to, 405

Women, Massachusetts Reformatory for, 192

Wright, Dr. C. D., variation in statistics of crime, 18 ; influences of changes in laws on crime, 44 ; variation in penalties, 83 ; intemperance and crime, 124 ; prison labor, 266

